Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MB Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MB Docket No. 01-317
	)	
Definition of Radio Markets	)	MB Docket No. 00-244

REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

John F. Sturm
President and Chief Executive Officer
NEWSPAPER ASSOCIATION OF AMERICA
1921 Gallows Road
Suite 600
Vienna, VA 22182
703.902.1601

Paul J. Boyle, Senior Vice President, Public Policy
Laura Rychak, Legislative Counsel
NEWSPAPER ASSOCIATION OF AMERICA
529 14th Street NW
Washington, DC 20045-1402
202.638.4770

Richard E. Wiley
James R. Bayes
Martha E. Heller
Eve K. Reed
of
WILEY REIN & FIELDING LLP
1776 K Street NW
Washington, DC 20006
202.719.7000

Its Attorneys

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SUMMARY

The opening comments in this proceeding show in great detail what the vast majority of American consumers already know—that the current media marketplace is characterized by remarkable abundance and that it will continue to expand at a head-spinning pace in the future. Commenters provided extensive and persuasive additional evidence to demonstrate, as they have throughout these protracted proceedings, that the decades-old ban on newspaper/broadcast cross-ownership has no relevant role in today's fiercely competitive, increasingly fragmented, and ever-changing media world. Therefore, it should be eliminated.

A broad range of industry representatives, trade associations, and public interest groups documented the growth that has taken place in the media landscape in recent years and the remarkable diversity of outlets and content that now characterizes the marketplace. Indeed, the evidence confirms that the changes that have occurred even since the FCC's last periodic review in 2003 have been monumental. In particular, the record now shows incontrovertibly that the Internet plays a prominent and rapidly expanding role in the dissemination of both national and local news to American consumers. Parties representing markets ranging from the largest to some of the nation's smallest offered dozens of examples of locally oriented news and informational websites now vying for consumer attention. Many of these are unaffiliated with traditional media companies, but the record shows that those that are owned by newspaper publishers and broadcasters also make a significant contribution to local diversity by differentiating their online content from that offered via their traditional outlets.

The opening comments further demonstrate that, as the industry continues to evolve, the discriminatory impact of the newspaper/broadcast prohibition is becoming increasingly pronounced. The challenging financial climate facing traditional newspaper publishers and

broadcasters was a prominent theme in the opening comments. Numerous parties echoed what is being widely reported in the press—that newspapers are experiencing declining advertising revenues and diminishing circulation that are raising red flags about their future profitability. Reports of the economic threats facing the broadcast industry are similarly dire. As many commenters explained, broadcasters increasingly are being forced to consider curtailing or abandoning costly local news operations. Cutbacks already have occurred in some markets, and the prospect of additional reductions is looming.

Despite the seemingly undeniable evidence to the contrary, a few commenters persist in their efforts to persuade the FCC that these revolutionary changes should carry no weight in this proceeding. In particular, several like-minded pro-regulatory parties aver, in essence, that the only relevant fact about the current marketplace is that daily newspapers and broadcast TV stations continue to be the most popular local news outlets. For this reason alone, as far as these commenters are concerned, the FCC should view the media landscape of 1975 and that of today as fundamentally identical. In particular, these parties write off the Internet as a non-factor in the local news and information marketplace. The concrete evidence provided in this proceeding proves otherwise. In any event, as NAA and other commenters have explained, the myopic focus of pro-regulatory commenters on the relative "popularity" of newspapers and television broadcast services does not capture the breadth of news and informational choices that today's consumers have at their disposal and should not govern the agency's diversity analysis in this proceeding.

Somewhat ironically, several self-appointed representatives of "consumer interests" also are dismissive of the role that blogs and other forms of citizen journalism now play in the marketplace. According to these parties, these media "do not undertake the same editorial functions" as traditional outlets. The record shows, however, that in a rapidly growing number of cases this assertion is untrue. More importantly, blogs should not have to function in exactly the same way as traditional media in order to be credited as legitimate alternative news sources. Indeed, that blogs and other online news sources play a somewhat different role than traditional print publications or broadcasters is part of what makes their contribution to the news and information marketplace so important.

In a further effort to hide from the monumental shifts that have occurred in the media marketplace over the years, pro-regulatory commenters aver that the newspaper publishing and broadcasting industries remain as economically resilient as ever. As explained herein, the evidence to the contrary continues to accrue on almost a daily basis. Even though it may be the case that newspapers and broadcasters remain competitive and in some cases highly profitable enterprises today, NAA and many other parties have shown that the economic trends in these industries have taken a decisive downward turn in recent years. Moreover, traditional media should not have to show that they will not be able to "survive" without the ability to pursue local cross-ownership in order for the agency to eliminate the unnecessary and counterproductive ban. NAA submits that pro-regulatory parties have not shown that the prohibition is necessary to preserve competition or diversity, much less that *allowing* cross-ownership will cause any harm to the marketplace. They thus have failed to proffer any rationale for perpetuating the ban.

At the same time, the evidence continues to accumulate that newspaper/broadcast cross-ownership can serve as an antidote to these negative trends by enabling combinations to take advantage of cost efficienices and economies and, in so doing, to provide exceptional local content. In the opening round of comments, cross-owners representing a broad spectrum of markets supplemented the already extensive evidence demonstrating that cross-ownership enhances the quantity and quality of locally-oriented news and informational programming. Thus, it remains clear that the FCC reached the correct conclusion in 2003: keeping the blanket ban in place certainly will not enhance, and may in fact significantly undermine, the agency's localism objectives.

On the other hand, pro-regulatory commenters offer no conclusive evidence to buttress their speculative and counter-intuitive assertions that maintaining the newspaper/broadcast ban somehow will serve localism. Although one recent study by Michael Yan of the University of Michigan purports to show that newspaper ownership is not positively correlated with the quantity of local news provided by cross-owned TV stations, that study offers only a partial, and misleading, picture of the relationship between cross-ownership and local news. Moreover, the study actually finds that newspaper-owned stations are significantly more likely to provide local news in the first place and that they air more weekly minutes of local news and public affairs programming than other stations. Although the Yan study attempts to mask these critical facts, its attempt to do so is based on a flawed econometric model. Moreover, the study does not even attempt to address the relationship between cross-ownership and the *quality* of local television news, which was central to the FCC's findings in 2003.

The evidence with respect to viewpoint diversity is similarly lopsided in favor of deregulation. Real-world and empirical evidence continues to verify that cross-owners do not have incentives to conform the viewpoints presented across different outlets. The handful of irrelevant anecdotes and analyses offered by pro-regulatory commenters, most of which have been paraded before the FCC in previous rounds of these proceedings, do not show otherwise. Moreover, the record demonstrates conclusively that, in the vibrantly competitive marketplace of the 21st century, no media operator is in a position to monopolize the national or local debate on any important issue.

Finally, the comments clarify the agency's legal imperatives in this proceeding. Many commenters recognized that the FCC is obligated to repeal or modify the blanket cross-ownership ban in this proceeding in light of its previous findings and the Third Circuit's opinion. No serious argument to the contrary has been advanced by any of the advocates of continued cross-ownership regulation. What is more, the comments show that, in today's remarkably diverse media marketplace, the scarcity rationale no longer can shield the cross-ownership prohibition from appropriate constitutional scrutiny. But even if the scarcity rationale continues to appy, the blanket restriction no longer can survive even the most lenient level of constitutional analysis in light of the agency's prior determination that it no longer serves the public interest. Accordingly, the cross-ownership ban finally must be repealed.

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REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

I. INTRODUCTION

The Newspaper Association of America ("NAA") hereby submits its reply comments in response to the *Further Notice of Proposed Rulemaking* ("*Further Notice*") issued by the Commission on July 24, 2006 in the above-captioned proceedings.[1] Not surprisingly, the overwhelming weight of the evidence submitted by a wide range of

[1] *2006 Quadrennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; 2002 Biennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broad. Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broad. Stations in Local Markets; Definition of Radio Markets*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006) ("*Further Notice*"); *2006 Quadrennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Order, 21 FCC Rcd 10496 (2006) (order extending comment deadline until Oct. 23, 2006 and the reply comment deadline until Dec. 21, 2006); *2006 Quadrennial Regulatory Review—Review of the Comm'n's Broad. Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Order, 21 FCC Rcd 14460 (2006) (order extending reply comment deadline until Jan. 16, 2007).

commenters in the opening round of this proceeding shows that the time for the FCC to eliminate the newspaper/broadcast cross-ownership ban has come and, indeed, that Commission action is long overdue. As has been the case throughout the FCC's protracted media ownership proceedings, the record shows that, with each passing day, the incredibly diverse and hyper-competitive media world looks less and less like the one that informed the agency's decision to adopt the ban over 30 years ago. And, as the industry continues to evolve and become ever-more abundant and efficient, the discriminatory impact that the cross-ownership prohibition has on traditional newspaper publishers and broadcasters has become increasingly dire. At the same time, the record continues to show that the FCC's traditional public interest objectives would be served by getting rid of the ban, and applicable statutory and constitutional requirements make clear that the agency is legally required to do so. Accordingly, as it has done many times in the past, NAA once again implores the Commission to move forward to eliminate the outdated and counterproductive newspaper/broadcast cross-ownership restriction.

II. THE RECORD SHOWS THAT DEVELOPMENTS IN THE MEDIA LANDSCAPE HAVE RENDERED RESTRICTIONS ON CROSS-OWNERSHIP UNNECESSARY AND AFFIRMATIVELY HARMFUL TO THE PUBLIC INTEREST

A. A Wide Variety of Industry Representatives and Public Interest Groups Have Supplied Extensive Evidence Documenting the Rich Diversity of News and Informational Options Now Available to Consumers in Markets of All Sizes Throughout the Nation

The evidence in this proceeding shows in great detail what already is patently obvious to the vast majority of American consumers—that the media marketplace is characterized by remarkable abundance and that it can only be expected to continue to expand at an ever-accelerating pace in the future.[2] A broad range of industry representatives, trade associations, and public interest groups have provided comprehensive data demonstrating the growth that has occurred since the 1960s and 1970s, when the newspaper/broadcast cross-ownership ban and many of the FCC's other local ownership rules were adopted.[3] Many commenters also focused particular attention on the remarkable developments that have occurred in the short time since 2003, when the agency last examined the state of the media marketplace in connection with its Section 202(h) periodic review mandate.[4]

In particular, parties documented the substantial increase in the number of traditional media outlets, both from the time when the ownership rules were put in place

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[2] *See, e.g.*, Comments of Belo Corp. at 10-12 ("Belo Comments"); Comments of Bonneville International Corp. at 6-11 ("Bonneville Comments"); Comments of CBS Corp. at 1-3, 6-11 ("CBS Comments"); Comments of Clear Channel Communications, Inc. at 7-17 ("Clear Channel Comments"); Comments of Cox Enterprises, Inc. at 17-18, 20-23 ("Cox Comments"); Comments of Entravision Holdings, LLC at 6-9 ("Entravision Comments"); Comments of Fox Entertainment Group and Fox Television Stations, Inc. at 5-17 ("Fox Comments"); Comments of Freedom of Expression Foundation at 10-12 ("Freedom of Expression Comments"); Comments of Gannett Co. at 14-20 ("Gannett Comments"); Comments of Gray Television, Inc. at 6-11 ("Gray Comments"); Comments of Hearst-Argyle Television, Inc. at 4-25 ("Hearst-Argyle Comments"); Comments of Media General, Inc. at 42-63 ("Media General Comments"); Comments of The Media Institute at 1, 4-5 ("Media Institute Comments"); Comments of Morris Communications Co., LLC at 9-13 ("Morris Comments"); Comments of the National Association of Broadcasters at 5-22 ("NAB Comments"); Comments of NBC Universal, Inc. and NBC Telemundo License Co. at 12-22 ("NBC Comments"); Comments of Nexstar Broadcasting at 6-10 ("Nexstar Comments"); Comments of the Progress and Freedom Foundation at 10-40 ("Progress and Freedom Foundation Comments"); Comments of Shamrock Communications Inc. and the Scranton Times, L.P. at 2-3 ("Shamrock Comments"); Comments of Sinclair Broadcast Group, Inc. at 12-25 ("Sinclair Comments"); Comments of Tribune Co. at 15-79 ("Tribune Comments"). All were submitted in MB-Docket Nos. 06-121, *et al*. on October 23, 2006.

[3] *See* Bonneville Comments at 6-7; CBS Comments at 7-8; Freedom of Expression Comments at 10-12; Media General Comments at 43-50; Media Institute Comments at 4-5; NAB Comments at 6-12; Progress and Freedom Foundation Comments at 10-23; Shamrock Comments at 2-3; Tribune Comments at 27-79.

[4] *See* Bonneville Comments at 7-11; CBS Comments at 8-10; Cox Comments at 20-23; Entravision Comments at 6-9; Fox Comments at 5-17; Gannett Comments at 14-20; Gray Comments at 6-11; Hearst-Argyle Comments at 4-16; Media General Comments at 55-63; Morris Comments at 9-13; NAB Comments at 12-22; Sinclair Comments at 12-25; Tribune Comments at 15-79.

and in recent years.[5] More significantly, numerous parties provided detailed evidence regarding the explosive growth that has occurred among an ever-growing array of new and alternative media.[6] Included in the opening comments were extensive showings regarding the Internet[7] as well as a variety of emerging audio,[8] video,[9] and print[10] media. Overall, the comments make clear that consumers today can and do turn to a broad, easily accessible, highly individualized, and ever-expanding mix of outlets for news, information, and entertainment.[11]

Moreover, a number of participants to this proceeding supplemented information concerning these indisputable national trends with market-specific examples in a wide

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[5] *See* Bonneville Comments at 6-7; Clear Channel Comments at 7-10; Freedom of Expression Comments at 10-12; Media General Comments at 43-47; NAB Comments at 6-12; Tribune Comments at 27-79.

[6] *See* Bonneville Comments at 7-9; CBS Comments at 8-10; Clear Channel Comments at 11-17; Cox Comments at 20-23; Entravision Comments at 6-9; Fox Comments at 6-17; Freedom of Expression Comments at 11-12; Gannett Comments at 14-20; Gray Comments at 6-11; Hearst-Argyle Comments at 4-16; Media General Comments at 49-55; Media Institute Comments at 1, 5; NAB Comments at 12-22; NBC Comments at 14-18, 19-22; Progress and Freedom Foundation Comments at 10-31; Sinclair Comments at 13-21; Tribune Comments at 15-79.

[7] *See* Bonneville Comments at 7-9; CBS Comments at 8-9; Cox Comments at 21-23; Entravision Comments at 6-9; Fox Comments at 6-11, 14-17; Gannett Comments at 14-20; Gray Comments at 8-9; Hearst-Argyle Comments at 6-13; Media General Comments at 49-55; NAB Comments at 12-22; NBC Comments at 14-18, 19-22; Progress and Freedom Foundation Comments at 18-20, 27-28; Sinclair Comments at 13-21; Tribune Comments at 15-26, 44-46, 53-55, 62-64, 70-72, 78-79.

[8] *See* CBS Comments at 10; Clear Channel Comments at 11-17; Media General Comments at 49; Media Institute Comments at 5; NAB Comments at 15, 19-20; Tribune Comments at 30-32.

[9] *See* CBS Comments at 9; Entravision Comments at 7-9; Fox Comments at 11-12, 14-15; Gray Comments at 8-9; Hearst-Argyle Comments at 4-16; Media General Comments at 56-63; NAB Comments at 15-18; NBC Comments at 13-18; Nexstar Comments at 8-10; Sinclair Comments at 8-10, 15-25; Tribune Comments at 28-30, 39-40, 50-51, 58-59, 67-68, 75-76.

[10] *See* Media General Comments at 45; Tribune Comments at 34, 42-43, 52, 60-61, 69-70, 77.

[11] *See* Fox Comments at 5-6, 10; Gray Comments at 8-9; Hearst-Argyle Comments at 7; Morris Comments at 12; NAB Comments at 49-54; Progress and Freedom Foundation Comments at 36-40.

range of large, mid-sized, and small communities.[12] For example, the National Association of Broadcasters ("NAB") submitted a recent survey by BIA Financial Network that examined 25 DMAs ranging from Boston to North Platte, Nebraska during a two decade period (1986-2006).[13] Among other findings, the survey reported an average increase of 39.0% in the number of full power television stations, 42.3% in the number of radio stations, and 793% in the number of cable channels.[14] The survey further found the 25 DMAs to be served by an average of 15.2 low power television stations, 8.1 daily and 28.6 weekly newspapers, and two multichannel satellite radio services.[15]

Likewise, the Tribune Company ("Tribune") provided nearly 50 pages cataloging the media outlets in each of the five markets in which it currently owns and operates newspaper/broadcast combinations.[16] Included within these showings were specific facts regarding the amount of local news and information offered by different types of outlets, including broadcast television and the Internet.[17]

Media General, Inc. ("Media General") also submitted extensive surveys of the media outlets available in the six markets in which it owns both a newspaper and a television station, which range in size from Tampa, the 12th ranked DMA, to Panama

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[12] *See* Belo Comments at 10-12; Cox Comments at 17-18; Media General Comments at 45-50, App. 7, 9-14; NAB Comments at 6-12; NBC Comments at 18-22; Tribune Comments at 34-79.

[13] NAB Comments at 8, Attachment A.

[14] *Id*.

[15] *Id.*

[16] Tribune Comments at 34-79.

[17] *See id.* at 38, 44-45 (New York DMA); 48-50, 54-55 (Los Angeles DMA); 55-58, 62-63 (Chicago DMA); 65-67, 70-71 (Miami-Fort Lauderdale DMA); 73-75, 78 (Hartford-New Haven DMA).

City, Florida, the 157th DMA.[18] As Media General demonstrates, each of these markets offers local consumers literally hundreds of media options, including full-power and low-power TV stations; full-power and low-power radio stations; several multichannel distributors, each of which offers consumers several hundred channels; a plethora of daily, weekly, and specialty newspapers; numerous magazines; and a multitude of locally oriented websites.[19] The information provided by both Media General and Tribune reveals that, notwithstanding the presence of a newspaper/broadcast combination, each of the relevant markets has experienced dramatic growth and is highly diverse and competitive.[20] Indeed, there is no evidence whatsoever that grandfathered or other existing newspaper/broadcast combinations have stunted competition or diversity in their local markets.

Like NAA,[21] many commenters provided specific evidence regarding the incredible diversity of local news and other content available to consumers on the Internet.[22] For instance, Bonneville International Corporation ("Bonneville") submitted numerous examples of blogs dedicated to local news reporting, politics, and culture in the St. Louis, Pittsburgh, New Orleans, Asheville, North Carolina, and Billings, Montana markets.[23] Entravision Holdings, LLC ("Entravision") offered examples of community

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[18] *See* Media General Comments at 45-50, App. 7, 9-14.

[19] *Id*.

[20] *See also* Belo Comments at 10-12 (documenting local media in Dallas market).

[21] *See* NAA Comments at 54-64.

[22] *See* Belo Comments at 11; Cox Comments at 22-23; Entravision Comments at 6-9; Fox Comments at 14-15; Gannett Comments at 19-20; Hearst-Argyle Comments at 12-13, 20-22; Media General Comments at 52-54; NAB Comments at 18; NBC Comments at 20-22; Tribune Comments at 20-26.

[23] Bonneville Comments at 9-10.

oriented websites in several of its television markets, including Boston, Denver, Las Vegas, Hartford, Connecticut, Albuquerque, New Mexico, and Washington, D.C.[24] Similarly, Media General collected and categorized scores of sites available, on a local basis, in each of its six convergence markets.[25] As Media General noted, various local sites in each of these markets offer opportunities for citizen discourse on current political and civic issues.[26] To highlight the recent skyrocketing growth of media companies focused exclusively on the provision of online local news, Media General further pointed out that the sites operated by the Independent Media Center ("IMC") have multiplied by more than seven times in the last two years alone. While there were just eight domestic IMC sites in 2004, there are now 60.[27]

Similarly, Tribune offered extensive information about the recent development of the Internet as a vehicle for local news and information from a broad perspective and provided specific examples of the numerous locally oriented websites in each of its six cross-ownership markets.[28] NBC Universal, Inc. and NBC Telemundo ("NBC") reported that the New York *alone* market has at least 55 locally oriented news websites, only a handful of which are associated with traditional media outlets such as newspapers and

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[24] Entravision Comments at 7.

[25] Media General Comments at 52-53, App. 9-14.

[26] *Id*. at 53.

[27] *See id.* at 54. As indicated on its website, the IMC is a collective effort of hundreds of independent media makers from around the world who are dedicated to providing a forum for independent reporting about important social and political issues. There are currently over 150 IMCs around the world, each of which is an autonomous group that has its own mission statement, manages its own finances, and makes its own decisions through its own processes. *See* https://docs.indymedia.org/view/Global/FrequentlyAskedQuestionEn#how (last visited Jan. 15, 2007).

[28] Tribune Comments at 20-26, 44-46, 53-55, 62-64, 70-72, 78-79.

broadcast stations, while the much smaller Charlotte, North Carolina market has more than a dozen such locally oriented news websites.[29]

In sum, the evidence provided in the opening round of this proceeding leaves no room for dispute that the current media marketplace is incredibly diverse, highly competitive, abounding with locally oriented options, and in no need of burdensome and counterproductive restrictions on broadcast cross-ownership. That, NAA submits, should end the inquiry. Absent a demonstrable marketplace failure, there can be no justification for intrusive and discriminatory governmental regulation of media cross-ownership.

B. Numerous Parties Also Provided Concrete Evidence That Newspaper Publishers and Broadcasters Are Facing Increasing Competitive Challenges That Are Exacerbated by the Existing Cross-Ownership Ban

The opening comments were replete with evidence concerning the financial challenges facing traditional broadcasters and newspaper publishers in today's highly fragmented media marketplace.[30] A wide range of parties emphasized that the existing rules, including in particular the newspaper/broadcast cross-ownership ban, unnecessarily handicap traditional media vis-à-vis their ever-expanding list of multimedia competitors and thereby exacerbate these negative economic trends.[31] Given the especially dramatic

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[29] NBC Comments at 20-21.

[30] *See* Belo Comments at 18; Comments of Block Communications, Inc. at 2-4, 7-8 ("Block Communications Comments"); Comments of Cascade Broadcasting Group, LLC at 1-4 ("Cascade Broadcasting Comments"); CBS Comments at 11; Cox Comments at 10-12; Fox Comments at 12-13; Freedom of Expression Comments at 10, 22; Gannett Comments at 21-25; Comments of Granite Broadcasting Corporation at 3-6 ("Granite Comments"); Gray Comments at 10-15, Comments of Hoak Media LLC at 4-6 ("Hoak Media Comments"); Comments of KMVD Licensee Co., LLC at 6 ("KMVD Comments"); Media General Comments at 45, 63; Morris Comments at 10-11; NAB Comments at 23-34, 94-98; NBC Comments at 7-12; Nexstar Comments at 6-10; Shamrock Comments at 6-7; Comments of Smaller Market Television Stations at 6-10 ("Smaller Market Television Comments"); Tribune Comments at 33-42, 46-52, 55-61, 64-69, 72-77.

[31] *See* Block Communications Comments at 7-8; Cascade Broadcasting Comments at 3; Gray Comments at 11; KMVD Comments at 6; NAB Comments at 27-29; Nexstar Comments at 10.

changes in the marketplace that have occurred since 2003, the need for regulatory relief has become even more acute since the Commission's last—and still incomplete—periodic review proceeding.[32]

Several parties provided statistics demonstrating the steady decline in daily newspaper circulation in recent years.[33] Commenters further recounted that corresponding significant drops in newspaper advertising revenues, Wall Street valuations, and earnings have followed.[34] This evidence is corroborated by a June 2006 "*Financial Health of the Newspaper Industry*" analysis released by the Commission on December 29, 2006.[35] As the analysis explains in detail, newspaper "[a]dvertising revenues have flattened primarily because the Internet has been draining advertising dollars from the [ ] industry."[36] More disquieting, the "bounce" (or ability to rebound from cyclical declines in advertising revenue) appears to have "gone out of" the industry in recent years.[37] At the same time, the costs facing newspaper publishers "have continued to rise," climbing over 15% between 2000 and 2005 alone.[38] Not surprisingly,

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[32] *See* Block Communications Comments at 7-8; Gannett Comments at 24.

[33] *See* Fox Comments at 13; Freedom of Expression Comments at 10, 22; Gannett Comments at 21; Media General Comments at 45; Tribune Comments at 33-34, 40-43, 51-52, 59-61, 68-69, 76-77.

[34] *See* Gannett Comments at 21-22; NAB Comments at 32; Shamrock Comments at 6-7.

[35] *See Financial Health of the Newspaper Industry*, June 2006, *at* http://www.fcc.gov/ownership/additional.html (last visited Jan. 16, 2007) ("*2006 Financial Health of the Newspaper Industry Analysis*"). NAA notes that this document was released among a large group of internal FCC documents, many of which were in draft or incomplete form.

[36] *Id*. at 2.

[37] *Id*. at 1.

[38] *Id.* at 2.

the "result has been downward pressure on profit margins and falling stock prices."[39] Overall, the analysis concludes that "although exceptional newspaper properties remain highly valued and command high prices on sale," the newspaper industry "continues to face serious downward pressure on that profitability from rising costs and slow-growing revenues."[40]

Broadcasters provided similarly dire reports of the threats facing their industry. Industry representatives from markets of all sizes uniformly stressed in their opening comments that they are struggling as their audiences continue to migrate to subscription services and the Internet.[41] Advertising revenues, the lifeblood of the industry, have taken a substantial hit,[42] and the value stations command in the marketplace has taken a downward turn.[43] As a result, commenters explained, broadcasters increasingly are being forced to curtail or abandon costly local news operations.[44] These problems are especially acute in small and mid-sized markets, where many of the costs of running a

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[39] *Id.*

[40] *Id*. at 4.

[41] *See* Block Communications Comments at 2; Cascade Broadcasting Comments at 1; CBS Comments at 11; Fox Comments at 12-13; Gannett Comments at 23-24; Granite Comments at 3-4; Gray Comments at 10; Hoak Media Comments at 6; Media General Comments at 63; NAB Comments at 25-27, 29-35; NBC Comments at 7-12; Nexstar Comments at 6-10; Tribune Comments at 35-40, 46-51, 56-59, 64-68, 72-76.

[42] Granite Comments at 4; Gray Comments at 10; Hoak Media Comments at 6; NAB Comments at 29-35; NBC Comments at 10-11; Smaller Market Television Comments at 8-9.

[43] *See* NBC Comments at 12.

[44] *See* Block Communications Comments at 3; Gray Comments at 14-15; Media General Comments at 63; NAB Comments at 94-98; Smaller Market Television Comments at 9-10.

station are comparable to those in large markets, but broadcasters do not have sufficiently large advertising bases to help them withstand new competitive threats.[45]

The comments further demonstrate that the handful of commonly owned daily newspapers and broadcast stations currently in existence are hardly immune to these trends. As has been shown in this and prior proceedings, cross-ownership unquestionably enables newspaper publishers and broadcasters to operate more efficiently and, perhaps even more significantly, to devote additional resources to costly local news operations.[46] Cross-ownership has not, however, enabled newspapers or broadcasters to assume dominant positions in their local markets. Quite the contrary, as local consumers increasingly turn their attention to the Internet and other new media, cross-owned properties have been subject to the same audience erosion trends as their single outlet counterparts.

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[45] *See* Block Communications Comments at 2-3; Granite Comments at 3-46; Gray Comments at 12-15; Hoak Media Comments at 4; Media General Comments at 63; Nexstar Comments at 10; Smaller Market Television Comments at 6-10.

The positive impact that permitting greater levels of cross-ownership could have on these disturbing trends is described in an analysis by Leslie M. Marx, FCC Office of Strategic Planning, recently released by the FCC in conjunction with the instant proceeding. *See* Leslie M. Marx, *Summary of Ideas on Newspaper-Broadcast Cross-Ownership*, June 15, 2006, *at* http://www.fcc.gov/ownership/additional.html. (last visited Jan. 16, 2007). In his paper, Mr. Marx suggests that "it might be appropriate [for the Commission] to drop the [newspaper/broadcast] restrictions and allow any newspaper-broadcast cross-ownership that respects the broadcast ownership limits." *Id*. at 3. Specifically, Mr. Marx reasons that, while cross-ownership should not be expected to harm competition, diversity, or localism "[i]n markets with a large number of independent media outlets (particularly news outlets)," cross-ownership "may be necessary to guarantee the survival of the news outlets that currently exist" in very small markets. *Id*. at 3. In support of the latter proposition, Mr. Marx shows that 10 percent or more of the TV stations in markets with six or fewer commercial television stations have experienced "news curtailments," or losses in local newscasts. *Id*. at 13. In such markets, Mr. Marx explains, "newspaper-TV cross-ownership restrictions are harmful to the public interest in that they prevent cost sharing that could make local TV news viable when it would not be otherwise." *Id*. at 5.

[46] *See, e.g.*, NAA Comments at 65-79.

In its opening comments, Tribune explained that, in each of the five markets in which it currently owns both a newspaper and television station, the audience share of the TV station has declined over time and is comparable to that of the standalone stations in the market.[47] For example, in the New York DMA, the audience share of Tribune-owned station WPIX dropped from 8 in 1975 to 4.5 in 2006.[48] As Tribune noted, during the time that it has been jointly owned with *Newsday*, a daily published on Long Island, WPIX's audience share actually decreased at a significantly faster rate than its English-language network affiliated competitors (ABC, CBS, Fox, NBC).[49] Likewise, in the Los Angeles DMA, the ratings of Tribune's KTLA plummeted from 9 in 1975 to 3.7 in 2006.[50] Even more telling, KTLA's audience share has decreased by 48% during the time that it has been commonly owned with the *Los Angeles Times*.[51] Similar patterns are evident in Tribune's other cross-ownership markets—Chicago, South Florida, and Hartford-New Haven Connecticut.[52]

Thus, while the efficiencies and public interest benefits inherent in cross-ownership certainly can help local newspaper publishers and free, over-the-air broadcasters to better serve their local markets with in-depth coverage and enhance their ability to remain viable in today's increasingly competitive marketplace, there is no basis for any concern that such combinations will dominate their communities or otherwise

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[47] Tribune Comments at 36-38, 46-48, 56-58, 64-66, 72-74.

[48] *Id*. at 36.

[49] *Id*. at 37.

[50] *Id*. at 47.

[51] *Id*. at 48.

[52] *Id*. at 56-58, 64-66,72-74.

cause market dislocation. Indeed, given the intense competition among broadcast stations as well as the escalating impact of new media outlets, no single provider of local news—including a cross-owned daily newspaper or broadcast station—realistically can hope to exercise control over the dissemination of information in today's environment.

C. **The FCC Should Disregard the Efforts of a Small Handful of Commenters to Portray the Media Marketplace as Essentially Unchanged Since the Cross-Ownership Ban Was Adopted Over Thirty Years Ago**

Despite the seemingly undeniable fact that the media landscape of today is dramatically different from that of the 1970s and even from that of 2003, a few commenters attempt to convince the FCC that the revolutionary changes that already have taken place and continue to transform the marketplace should carry no weight in this proceeding. Without crediting the wealth of media outlets now vying for consumer attention and providing local news and information in markets throughout the country, the Consumers Union, *et al*. ("Consumers Union") and several other like-minded parties aver that the only relevant fact is that daily newspapers and broadcast TV stations continue to be the most "popular" local news outlets.[53] For this reason alone, as far as these commenters are concerned, the FCC should view the media landscape of 1975 and that of today as essentially identical.[54] As demonstrated in detail in the opening

[53] *See* Comments of Consumers Union, *et al*. at 10-13 ("Consumers Union Comments"); Comments of the American Federation of Labor and Congress of Industrial Organizations, *et al*. at 52-53 ("AFL-CIO Comments"); Comments of the Center for Creative Voices in Media, Center for Digital Democracy, *et al*. at 3-4 (Center for Creative Voices Comments); Comments of Communications Workers of America, *et al.*, at 17-18 ("CWA Comments"); Comments of the Office of Communication of the United Church of Christ at 40-42 ("UCC Comments").

[54] *See, e.g.*, AFL-CIO Comments at 51-52 (suggesting that the newspaper/broadcast cross-ownership rule is "as important today as it was in 1975" and, "[a]s was true fifty years ago, most Americans still get their local news and information from their daily newspaper and one of a handful of broadcast television stations").

comments and recapped above, however, this myopic view of the current environment simply cannot be reconciled with reality.

In particular, while begrudgingly acknowledging the existence of the Internet, a small handful of pro-regulatory parties would have the FCC believe that this ubiquitous medium is an insignificant factor in the local media marketplace.[55] Once again, these assertions are based on the claim that the Internet may not yet be as *popular* a source of local news and information as traditional newspapers and broadcast outlets.[56] Notably, the suggestions that the Internet should not be considered at all (or that it should be given only minimal consideration) in this proceeding are not substantiated with meaningful analyses of the wealth of online options available to consumers in most markets, but only with misdirected criticisms and broad generalizations.[57] On the other hand, as explained

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[55] *See id*. at 38-41; *see also* Consumers Union Comments at 11-13; Center for Creative Voices Comments at 3-4; CWA Comments at 18, 23; Comments of Adam Marcus at 24-26 ("Marcus Comments"); Comments of Nancy Stapleton at 3-4 ("Stapleton Comments"); UCC Comments at 42-43.

[56] *See* Consumers Union Comments at 11-13; Center for Creative Voices Comments at 3-4; CWA Comments at 17-19; UCC Comments at 42-43.

[57] On January 11, Consumers Union publicly released a study purporting to show that some of the examples of locally oriented web sites noted in NAA's opening comments "do not provide a compelling reason to remove" the newspaper/broadcast ban or the agency's other local ownership restrictions. *See* S. Derek Turner and Mark Cooper, *Independent Local News Web Sites Lack Original Content and Do Not Significantly Contribute to Source or Viewpoint Diversity*, at 1, *at* http://www.stopbigmedia.com/=research (last visited Jan. 13, 2007) ("*CU Local Web Sites Paper*"); *see also* NAA Comments at 60-64. Of course, NAA did not base its position on any one website, or even one category of websites. Rather, NAA offered a number of examples of locally oriented websites as illustrative of the incredible breadth and variety of information assembled on the Internet and readily accessible to any citizen.

Moreover, NAA notes a number of weaknesses in the Consumers Union analysis. First, the data underlying the study was collected only on November 21, 2006, the Tuesday before the Thanksgiving holiday, three weeks after Election Day, and undoubtedly a slow news day. Nevertheless, the study itself concludes that 18% of the stories from the selected websites were, in fact, based on "original reporting." *CU Local Web Sites Paper* at 1. Further, while Consumers Union makes much of the fact that some content posted on the sites was originally created by other media, many of the news stories reported by the media, including newspapers and broadcasters, are derived from information gathered by other media outlets or from news wire services, such as the Associated Press and Reuters. NAA submits that references or links to other news sources add value, and help assure the user of the reliability of the site assembling the above, many commenters demonstrated in great detail and with concrete examples why the Internet in fact *should* be viewed as a critical player in today's local media arena. Specifically, a wide range of parties provided dozens of examples of websites that focus expressly on local news, information, and community affairs in markets throughout the country.[58] Further, commenters demonstrated that these sites often cover highly niche-oriented or even neighborhood-specific issues that may be too narrowly oriented for coverage by the major media.[59] Thus, not only is the contribution of the Internet to the local news and information marketplace unquestionably substantial, it also is unique in many important respects.

Several pro-regulatory commenters are particularly dismissive of the involvement that blogs have in the information marketplace, both at the national level and in local communities. In particular, these parties declare that blogs are irrelevant to the issues at stake in the proceeding because "[t]hey simply do not undertake the reporting and editing

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material. Indeed, one of the great *advantages* of the Internet medium is the ability to directly and conveniently link to other sources as a means to provide consumers with diverse points of view. In addition, the study conveniently excludes any specific details concerning DCist (www.dcist.com) from its analysis, even though this site was described in the same section of NAA's comments as the websites included in the Consumers Union analysis. *See* NAA Comments at 62. Of the examples noted by NAA, this would be the most familiar to the Commission and participants in this proceeding, given its focus on the Washington, DC political scene, and is a particularly rich source of local news and information. Finally, as noted above, there are dozens of other examples of locally oriented news and information web sites described on the record in this proceeding, many of which are strongly focused on reporting locally oriented "hard news." Locally oriented websites may be small in scope or limited in audience reach, but nevertheless play a significant role in that process by filtering and assembling news and information relevant to a particular community and allowing its members to contribute and react to the end product.

[58] *See* Section II.A., *supra*.

[59] *See, e.g.*, Belo Comments at 12 (discussing a Dallas news website's interactive homepage sites for 150 local high schools); Media General Comments at 52-55, App. 9-14 (citing examples of local websites aimed at niche audiences); Tribune Comments at 24-25 (providing examples of "hyperlocal" blogs).

functions that typify journalism as traditionally defined."[60] Ironically, at the same time that the Consumers Union argues in great detail that the First Amendment rights of citizens should be given paramount consideration in this proceeding,[61] they trivialize the rise of the blog and other forms of citizen journalism that have revolutionized the ability of ordinary citizens to exercise their First Amendment rights.[62]

These claims plainly mischaracterize the role that a growing number of blogs play in today's marketplace. In fact, commenters provided many examples of blogs that function and report local news and information based on journalistic standards analogous to those of traditional media outlets.[63] Moreover, just recently, the Media Bloggers Association, a nonpartisan group with approximately 1,000 members that has been working to extend the powers of the press to bloggers, has won press credentials for its members in high-profile federal trials.[64] The organization also is working to create a full set of ethical standards for bloggers, the acceptance of which would make them fully credentialed members of the press.[65] In any event, NAA submits, blogs should not have

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[60] Consumers Union Comments at 12, Study 8; *see also* UCC Comments at 43 (suggesting that Americans do not consider blogs as a valuable news source).

[61] *See* Consumers Union Comments at 7-8, Study 1.

[62] *See id.* at 12, Study 8; *see also* UCC Comments at 43. As demonstrated below, the view that Consumers Union, *et al*. have of First Amendment jurisprudence is one-sided and incomplete. *See* Section VI.B., *infra.* Indeed, NAA notes that while pro-regulatory commenters complain that the Internet is an ineffective means to communicate with consumers on newsworthy issues, they have themselves used Internet-based campaigns to great effect in rallying support for their positions in this very proceeding.

[63] *See* Section I.A., *supra* (citing Bonneville Comments at 9-10; Entravision Comments at 7; Media General Comments at 52-53, App. 9-14; NBC Comments at 20-21; Tribune Comments at 20-26, 44-46, 53-55, 62-64, 70-72, 78-79); *see also* NAA Comments at 49-52, 60-64.

[64] *See* Alan Sipress, *Too Casual to Sit in Press Row: Bloggers' Credentials Boosted with Seats at the Libby Trial*, W. Post, Jan. 11, 2007, at D1.

[65] *Id*.

to function in exactly the same way as traditional media in order to be credited as legitimate news sources. Indeed, that blogs and other online news sources play a somewhat different role than traditional print publications or broadcasters is part of what makes their contribution to the news and information marketplace so significant.

Without providing any evidence or examples, a few commenters further assert that the content provided by traditional media companies on the Internet is unimportant because it is merely duplicative of that offered via their print or broadcast vehicles.[66] Accordingly, these commenters insist, such websites make no contribution to local diversity.[67] The record proves otherwise. In its opening comments, NAA provided extensive evidence that, in fact, the content that newspaper publishers and broadcasters provide on the Internet is considerably different than that offered in their traditional formats.[68] As NAA explained, the immense capacity and unique attributes of the Internet enable newspaper publishers and broadcasters to distinguish their print, over-the-air, and online products.[69]

NAA bolstered its analysis with specific examples demonstrating that traditional media can and do provide far more, and far more innovative, content via the Internet than otherwise would be feasible.[70] Just to give one example, NAA explained that the publisher of *The Spokesman-Review* in Spokane, Washington webcasts its daily news

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[66] *See* AFL-CIO Comments at 40-41; Consumers Union Comments at 10-12, Study 8; CWA Comments at 21-29; Marcus Comments at 27-31; UCC Comments at 42-43.

[67] *See* AFL-CIO Comments at 40-41; Consumers Union Comments at 10-12, Study 8; CWA Comments at 21-29.

[68] *See* NAA Comments at 55-59.

[69] *Id*. at 55.

[70] *Id*. at 56-59.

meetings and posts original source materials to the newspaper's website.[71] The website also offers editor blogs to explain the news of the day as well as online chatrooms where readers can criticize news coverage or pose questions. Such ground-breaking efforts to make the newsgathering process transparent to local audiences simply would not be practical via a traditional daily newspaper or broadcast outlet.

Several other commenters provided similar evidence. For example, Belo Corp. ("Belo") described the ways in which the websites operated by *The Dallas Morning News* and WFAA-TV make a further, significant contribution to the mix of local news and information available to Dallas residents.[72] As evidenced in the Belo comments, the websites for both WFAA.com and DallasNews.com contain substantial amounts of local content that is neither broadcast on the station nor published in the newspaper. In particular, the websites combine print, audio, and video features to offer a multimedia experience that is not possible via either broadcast or newsprint. In addition, DallasNews.com has created MyHighSchool, which consists of separate interactive homepage sites for 150 local high schools that contain sports video, still photos, audio, and other information particular to sports at each high school. Capitalizing on the caapacity of the Internet to offer a vehicle for ongoing discussion and direct public input that is not practical to the same extent on either a local TV station or via traditional print, *The Dallas Morning News* also now offers local residents a variety of blogs and chatrooms.

[71] *Id.* at 57-58.

[72] *See* Belo Comments at 12-13.

Similarly, Gannett Co., Inc. ("Gannett") explained in its opening comments that azcentral.com, the website it owns and operates in Phoenix along with *The Arizona Republic* and KPNX-TV, does not "merely republish[]" what is in the newspaper and on local TV news.[73] Rather, the website unquestionably "has become a valuable local news source for Phoenix residents in its own right."[74] To illustrate this fact, Gannett detailed the site's special coverage of immigration rallies last spring, which offered real-time updates, factual details, and supporting video that otherwise would not have been available to the local audience.[75] Accordingly, a close look reveals that the online operations of broadcasters and newspapers do far more than simply parrot their existing content on the Internet and, in fact, contribute greatly to local diversity. Indeed, it would be a waste of the unique potential and characteristics of the Internet for media companies to limit themselves to repeating content on their websites.[76]

[73] *See* Gannett Comments at 28-29.

[74] *Id*. at 29.

[75] *See id*.; *see also* Belo Comments at 12-13 (noting that their affiliated websites provide "different and more complete coverage of local issues" than WFAA-TV or *The Dallas Morning News*, including interactive homepages geared toward local high schools).

[76] UCC further asserts that providing relief from the newspaper/broadcast cross-ownership ban would be superfluous because newspapers and broadcasters now can provide additional content via the Internet. *See* UCC Comments at 63-64. First and most fundamentally, UCC does not offer *any* explanation of why the existence of the Internet should preclude the Commission from eliminating the decades-old cross-ownership ban, which no longer serves any valid public interest purpose. Moreover, as shown above and in the opening comments, newspapers and broadcasters indeed are increasingly taking advantage of the ability to expand and diversify their content offerings via the Internet. However, such efforts hardly can be deemed to be the functional equivalent of publishing a daily newspaper or owning and operating an over-the-air broadcast station, given that each of these media has different strengths and weaknesses, packages and delivers news and information in differing ways, and appeals to consumers for varying reasons. In addition, confining newspaper publishers and broadcasters to the Internet unnecessarily would deprive local media from combining resources, operating more efficiently, and thereby enhancing their locally oriented services.

Finally, several commenters suggested that there is no evidence that newspaper publishers or broadcasters have experienced any competitive impact as a result of the explosive growth of the Internet and other alternative media.[77] In particular, these parties claim that newspaper publishers and broadcasters remain as economically resilient as ever because they generally continue to garner earnings that are consistent with other industries and have been able to sell properties at a profit.[78] Accordingly, these parties declare, there simply is no need for regulatory relief in this proceeding.

Once again, however, these parties not only have turned a blind eye to the fundamental changes that have occurred in the marketplace, but have misconstrued the nature of the FCC's task in this proceeding. The attempts to portray newspapers and broadcasters as holding the same dominant position in the media marketplace as was the case in the 1970s, once again, cannot withstand reality-based scrutiny. For example, while acknowledging that newspaper circulation has declined in recent years, the United Church of Christ, *et al*. ("UCC") avow that online readership and advertising revenue have more than filled the gap.[79] This assertion is not based on an accurate understanding of the industry. Although it is true that newspapers have experienced substantial increases in online advertising earnings in recent years, the online advertising segments of newspapers account for only a small slice (approximately 6.5 percent) of their total advertising revenue.[80] As a result, online revenues have only a limited capacity to make

[77] *See* UCC Comments at 67-68; CWA Comments at 38-46; Consumers Union Comments at 17, Study 9.

[78] *See* UCC Comments at 67-68; CWA Comments at 38-46.

[79] UCC Comments at 68.

[80] *See* NAA Comments at 42 (citing Julie Bosman, *Online Newspaper Ads Gaining Ground on Print*, N.Y. Times, June 6, 2006, at C1, *at*

up for the stagnation that has occurred in the print advertising realm. In fact, in the third quarter of 2006, the revenues earned from advertising on newspaper websites were insufficient to offset declines in print advertising.[81] As aptly put in the *2006 Financial Health of the Newspaper Industry Analysis* recently released by the FCC, although "newspapers are making progress toward capturing advertising revenues from the Internet," the industry has "a long way to go before realizing the full potential of this new source of revenues."[82]

More broadly, although it may be the case that newspapers and broadcasters remain competitive and even in some cases highly profitable enterprises today, the detailed evidence and first-hand accounts provided by NAA and many other parties show incontrovertibly that the economic trends in these industries have taken a decisive downward turn.[83] As one industry observer recently put it, "newspapers continue to produce profit margins of nearly 20%, thanks to steady cost cutting," but one "can only cut costs so much."[84]

Moreover, the traditional media should not be required to show that they will not be able to "survive" without cross-ownership relief before the agency will move forward to eliminate the unnecessary and counterproductive ban. Even if relaxing the rule were

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http://select.nytimes.com/search/restricted/article?res=F30813FD3F550C758CDDAF0894DE404482 (last visited Oct. 17, 2006)).

[81] *See* Holman W. Jenkins Jr., *Buy This Newspaper!*, Wall St. J., Nov. 29, 2006, at A19; *see also* Julia Angwin, *Newspapers Set to Jointly Sell Advertising on Their Websites*, Wall St. J., Jan. 10, 2007, at A1 ("While newspapers are selling more online ads, the growth isn't fast enough to make up for setbacks in print.").

[82] *2006 Financial Health of the Newspaper Industry Analysis* at 4.

[83] *See* Section II.B, *supra*.

[84]*See* Holman W. Jenkins Jr., *Buy This Newspaper!*, Wall St. J., Nov. 29, 2006, at A19.

not necessary to protect the economic well-being of traditional media, NAA submits that deregulation still would be called for in this proceeding. Pro-regulatory parties have not shown that the prohibition is necessary to preserve competition or diversity, much less that *allowing* cross-ownership will cause any harm to the marketplace. They thus have failed to proffer any rationale for perpetuating the ban. To the contrary, the record makes clear that *retention* of the ban poses serious public interest threats and that permitting cross-ownership is likely to generate important public interest benefits.[85]

In sum, the efforts of a small contingent of pro-regulatory commenters to anchor the Commission's media regulatory scheme in a world that no longer exists must be rejected. In particular, despite the efforts of these parties to dismiss the impact of what is undeniably one of the most important media innovations of the last century, the record clearly and convincingly shows that the Internet now plays a unique and central role in the dissemination of both national and local news to the American public. As a result of this and other new media developments, consumers now have an unprecedented ability to get their news, information, and entertainment from a broad mix of choices. The competitive impact that these advances have had and will continue to have on traditional

[85] UCC further contends that recent marketplace evidence suggests that existing media companies would be better-served by divesting existing cross-owned properties than by investing in newspaper/broadcast cross-ownership. *See* UCC Comments at 66-67. But the fact that an isolated number of media companies may be contemplating the sale, or have made a decision to divest, individual newspaper or broadcast properties is a far cry from concrete evidence that cross-ownership does not deliver the efficiencies and public interest benefits well-documented in this proceeding. In fact, many of the combinations that were grandfathered by the FCC in 1975 continue to exist today. Nor does the anecdotal evidence offered by UCC suggest that the FCC should deny those companies interested in cross-ownership the opportunity to pursue it. In any case, if UCC is correct that newspaper/broadcast cross-ownership is economically undesirable, then there should be no cause for concern if the agency moves forward to relax the ban—because rational companies would not opt for cross-ownership.

newspapers and broadcasters is indelibly clear and makes the need for regulatory relief more critical now than ever.[86]

III. THE OVERWHELMING WEIGHT OF THE EVIDENCE SUBSTANTIATES THE FCC'S AND THE THIRD CIRCUIT'S PRIOR CONCLUSIONS THAT NEWSPAPER/BROADCAST CROSS-OWNERSHIP ENHANCES LOCALISM

A. The Comments Are Replete With Real-Life Examples and Empirical Evidence That Newspaper-Owned Broadcast Stations Provide Exceptional Local News and Community Oriented Programming

Consistent with the overview outlined in NAA's comments,[87] the great weight of the evidence provided in the opening round of this proceeding confirms that newspaper/broadcast combinations across a broad spectrum of markets provide exceptional local content and community oriented service.[88] A quick review of the specific information and examples provided by commenters reaffirms the FCC's conclusion in 2003 that continuing to prevent such combinations certainly will not

[86] Two pro-regulatory commenters argue that, if the FCC opts to relax the cross-ownership ban at all, it should do so only by permitting limited, case-by-case waivers. *See* UCC Comments at 72-74; AFL-CIO Comments at 57. While a notable retreat from the previous hard-line position of pro-regulatory commenters that the blanket ban should not be relaxed under any circumstances, this suggestion hardly would provide the requisite level of regulatory certainty to the newspaper publishing and broadcast industries that already have been left in limbo on this issue for over a decade. Because they would not be guaranteed ultimate approval from the FCC, parties depending on a subjective waiver standard necessarily would be far more hesitant to enter into cross-ownership relationships, even when they clearly would benefit both the participants to a proposed agreement and consumers. Rather, NAA submits, if the agency decides to retain the rule in any form, it would be appropriate for it to build a provision for case-by-case waivers into a significantly relaxed version of the rule. While providing a large degree of regulatory certainty to the affected industries, the Commission thereby also would give parties the flexibility to make specified showings that a combination would serve the public interest, even if it does not fit within the letter of the revised rule.

[87] *See* NAA Comments at 65-79.

[88] *See, e.g.*, Belo Comments at 13-15; Cox Comments at 13-18; Gannett Comments at 25-31; Media General Comments at 7-22, App. 4; Morris Comments at 13-20; Tribune Comments at 34-79.

enhance, and in fact may considerably undermine, the agency's important localism objectives.[89]

For example, Media General provided a very detailed assessment of the locally oriented value each of its six newspaper/broadcast combinations adds to its respective market.[90] Specifically, in a comprehensive study of each combination, Professor Adam Clayton Powell, III of the University of Southern California concluded that all six communities received more and better local news and public affairs programming than they would absent the convergence benefits of the combinations.[91] Citing Media General's Tampa combination as emblematic of the enhancements realized by each of the combinations, Professor Powell demonstrated that benefits can be seen in at least four areas: breaking news, expanded news content, investigative and enterprise pieces, and greater understanding of the community.[92] In demonstrating how each of these improvements come to fruition, Professor Powell noted that *The Tampa Tribune* has approximately *six times* the number of reporters that co-owned WFLA-TV has, even though that station has a staff that is typical for large market network affiliated television stations.[93] Obviously, with convergence has come the possibility of "more eyes, more

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[89] *2002 Biennial Regulatory Review–Review of the Comm'ns Broad. Ownership Rules*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13767 (¶ 367) (2003) ("*2003 Order*"), *aff'd in part, rev'd in part, Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005).

[90] *See* Media General Comments at 7-22; *see also id.* at App. 4.

[91] *See id.* at App. 4A at 2-3. Professor Powell is the Director of the Integrated Media Systems Center, the National Science Foundation's Engineering Research Center for Multimedia Research at the University of Southern California Viterbi School of Engineering.

[92] *See id.* at 9, App. 4A at 2; *see also* App. 4A, Exhibits A-F.

[93] *Id*. at 9.

ears, and more mouths" on the street.[94] As a result, Media General's platforms are exceptionally well positioned both to disseminate breaking news developments quickly and to have the capacity for in-depth coverage.[95]

Further, as Professor Powell explained, combined Media General outlets often join forces to produce specials and investigative reports that could not have been done on a standalone basis.[96] Finally, "better sourcing" and access to more leaders and community institutions achievable through distinct sets of reporters allow the platforms to provide improved depth, understanding, and sensitivity in their coverage of diverse stories about the community.[97] The tangible results are evident in everything from the outlets' joint investigation of the hurricane-preparedness plans of Tampa area governments,[98] to an in-depth series on the experiences of parents who have lost children to cancer, to their coordination on townhall meetings held for local candidates.[99] As Media General attests, such extensive and outstanding community oriented efforts simply would be out of reach for most standalone outlets.

The comments make clear that larger markets also have witnessed the benefits of cross-ownership. Belo stressed that the existence of its Dallas combination has served as a "direct catalyst" for an overall increase in the quantity and quality of local news

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[94] *Id*.

[95] *See id*. at 9-10.

[96] *See id*. at 10.

[97] *See id*.

[98] *Id*.

[99] *Id*.

available in the market.[100] In particular, Belo explained that the sharing of resources not only has enhanced the news coverage of its co-owned TV station and daily newspaper, but also helped make possible the launch of several additional local and regional outlets, including a regional cable news channel, a Spanish-language daily newspaper, and a free daily specifically targeted to younger readers.[101] In Phoenix, the Gannett-owned combination also brings heightened local content to the market. As Gannett described in its comments, KPNX-TV prides itself on having the highest-rated local newscast,[102] while *The Arizona Republic* has taken advantage of the efficiencies inherent in cross-ownership to increase its in-depth and investigative reporting.[103]

Cox Enterprises ("Cox") also described the localism benefits arising from its newspaper/broadcast combinations in Atlanta and Dayton, Ohio.[104] In both of these cross-ownership markets, the broadcast stations have the resources to offer exceptional locally oriented programming. For example, the Atlanta station airs "People 2 People," the only weekly half-hour public affairs program on the air in the market, while the Dayton station produces "WHIO Reports," a similar weekly half-hour public affairs program for the Dayton area.

Thus, the companies that run newspaper/broadcast combinations in the modern media market continue to speak to the important advantages cross-ownership provides. Given the ability to share newsgathering resources with sister outlets and the journalistic

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[100] Belo Comments at 13.

[101] *Id*. at 13-15.

[102] *See* Gannett Comments at 27.

[103] *See id.* at 28.

[104] Cox Comments at 13-16.

and community-oriented traditions that daily newspapers bring to the table, it makes perfect sense that cross-ownership would generate these benefits. Researchers long have concluded that the operational efficiencies made possible by cross-ownership enable outlets to more effectively focus on their core local service objectives.[105] As far back as 1973, the FCC's media studies documented that co-owned newspapers and broadcast outlets provided consumers with twelve percent more local programming than their standalone competitors.[106] The same conclusion, that cross-owned outlets offer more and better local programming, has been reached time and time again.[107] The commenters in the latest round of these proceedings once again confirm for the Commission the cause and effect relationship between cross-ownership and localism.[108]

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[105] *See, e.g.*, Media General Comments at 23-29.

[106] *Id.* at 23.

[107] *See id.* at 23-29.

[108] UCC asserts in its comments that "convergence partnerships" between broadcast outlets and newspapers offer the same localism benefits as full cross-ownership. *See* UCC Comments at 64-65. Bonneville, the owner of a radio station that currently participates in such a partnership with *The Washington Post*, explained in its comments the shortcomings inherent in joint ventures and why full repeal of the cross-ownership ban would be far more advantageous to consumers. *See* Bonneville Comments at 14-15. According to Bonneville, the transaction and other costs associated with its existing partnership make it an unlikely alternative to co-ownership for most outlets. *See id*. at 15. Bonneville further stated that a single owner can better integrate the operations of both outlets and establish practices and procedures that provide for greater operational efficiencies and synergies. *Id.*

These same conclusions were reached by an empirical study of joint ventures cited by the Commission in the *2003 Order*. 18 FCC Rcd at 13755-56 (¶ 346) (*citing* Gannett Comments in MM Docket No. 01-235, Exhibit C, Besen and O'Brien, *An Economic Analysis of the Efficiency Benefits from Newspaper/Broadcast Station Cross-Ownership*). Noting the results of that study, the FCC concluded that "[t]he benefits of combined ownership are not likely to be achieved through joint ventures as opposed to combined ownership" because "joint ventures confront three classes of issues that hinder their ability to achieve efficient joint production: (1) the costs of reaching the agreement; (2) incentives to withhold private information; and (3) incentives to take actions that are not in the best interests of the joint venture." *Id.* On the other hand, the study showed that "joint ownership mitigates these possible hindrances." *Id.* UCC fails to explain why these economic conclusions are not still valid. Indeed, its comments are devoid of analysis of the differing characteristics of joint ventures and joint ownership and the impact that these differences could have for consumers.

B. **The Two Studies Purporting to Show That Cross-Ownership and Localism Are Unrelated Do Not Offer Meaningful Conclusions and Are Contrary to Record Evidence**

As they have in past proceedings, pro-regulatory commenters relied mostly on speculative theories and irrelevant anecdotes to justify their claims that retention of the outdated newspaper/broadcast ban somehow will serve localism.[109] In the two instances where these commenters advanced any sort of empirical analysis in an effort to bolster their suppositions,[110] the studies are flawed and offer only an inconclusive and misleading picture of the relationship between localism and cross-ownership. Both studies also run counter to the overwhelming evidence in the record concerning the specific, real-world experiences of existing newspaper/broadcast combinations.

In its 2003 decision to eliminate the blanket cross-ownership ban, the Commission grounded its determination that relaxation of the restriction would enhance localism on both extensive real-world examples and empirical evidence.[111] In particular, one of the studies conducted by the Media Ownership Working Group ("MOWG") firmly concluded that newspaper-owned network affiliates air more local news, win more journalism awards, and attract more local news viewers than other affiliates.[112]

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[109] *See, e.g.*, Consumers Union Comments, Study 10 at 197 (criticizing the alleged practice of newspaper chains of "sharing news among all of the[ir] nominally separate papers"); AFL-CIO Comments at iii (speculating that "[t]he national media chains are governed by the dictates of mass audiences, that is, a drive to capture large market shares by catering to the lowest common denominator in programming, undercutting the ability to deliver culturally diverse, locally-oriented, and public interest programming").

[110] *See* Michael Yan, *Newspaper/Television Cross-Ownership and Local News and Public Affairs Programming on Television Stations: An Empirical Analysis*, Oct. 17, 2006, attached to Comments of the Donald McGannon Communication Research Center ("*Yan Study*"); Consumer Union Comments, Study 16 at 310-329 ("*Cooper/Turner Study*").

[111] *See 2003 Order*, 18 FCC Rcd at 13742-61 (¶¶ 342-54); *see also Prometheus*, 373 F.3d at 398-99.

[112] Thomas C. Spavins, Loretta Denison, Scott Roberts, and Jane Frenette, *The Measurement of Local Television News and Public Affairs Programs*, released in MB Docket No. 02-277 (Sept. 2002), *at*

Now in this proceeding, several pro-regulatory commenters are pinning their claims on a study by Michael Yan of the University of Michigan that attempts to show that a subset of the MOWG findings were statistically insignificant.[113] According to the Yan Study, televisions stations that are jointly owned with a local daily newspaper may air more minutes of local news not because they are cross-owned, but because they operate in larger markets, are more likely to have network affiliations, tend to be VHFs, or achieve higher revenues.[114] Using data compiled by Professor Yan, Mark Cooper and S. Derek Turner of the Consumers Union constructed a similar study reaching analogous conclusions.[115]

Although downplayed by its author, the findings in the Yan Study actually strongly support the proposition that eliminating the cross-ownership ban would *advance* the Commission's localism goals. First, the study concludes that newspaper-owned stations are, in fact, significantly more likely to air local news than other stations.[116] Further, Yan's data expressly shows that cross-owned stations air nearly 90% more local news and approximately 110% more local public affairs programming than non-cross-owned stations.[117]

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http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226838A12.pdf (last visited Jan. 16, 2007) ("*Spavins Study*").

[113] *See Yan Study* at 2; UCC Comments at 65; Consumers Union Comments at Study 16 at 310-329.

[114] *See Yan Study* at 9, 18.

[115] *Cooper/Turner* Study at 321.

[116] *See Yan Study* at 18 (calculating a z-score of 6.35 for the cross ownership independent variable, the highest z-score among independent variables affecting the likelihood of airing local news); *see also Statement of Professor Jerry Hausman, Massachusetts Institute of Technology , Concerning Studies Submitted in FCC MB Docket No. 06-121* at ¶ 13 (Jan 16, 2007) (Attachment 1) ("*Hausman Statement*").

[117] *See Yan Study* at 17, Table 3.

Yan attempts to qualify these significant findings by constructing an econometric model that effectively screens out stations that do not air any local news from consideration and suggesting that cross-owned stations do not necessarily air a higher quantity of local news than other stations that also have local newscasts.[118] However, the finding that cross-owned stations are more likely to launch local news in the first place is indisputably significant. While 22 percent of the TV stations included in the Yan Study did not air any local news,[119] *every* TV station that currently is part of a local newspaper/broadcast combination does so. This dichotomy hardly can be viewed as irrelevant to the localism issues at stake in this proceeding.

Further, as explained in the attached statement of Professor Jerry Hausman of the Massachusetts Institute of Technology, the Yan Study actually shows that cross-owned stations air considerably more minutes of local news (242 minutes over the two week study period or approximately 17 minutes per day), *even* when the sample size is effectively limited through Yan's econometric model to stations that air local news and when other variables are taken into account.[120] Although Yan claims that this differential is not "statistically significant,"[121] Professor Hausman explains that Yan's conclusion is misleading because the absence of statistical significance most likely stems only from the small sample size used in the study, not from any lack of relationship between cross-ownership and the quantity of local news aired.[122] In fact, based on the difference in

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[118] *Id.* at 10.

[119] *Id.* at 8.

[120] *Hausman Statement* at ¶ 14.

[121] *See Yan Study* at 18, Table 4.

[122] *Hausman Statement* at ¶ 14.

local news minutes between cross-owned and non-cross-owned stations reported in Yan's findings,[123] Dr. Hausman concludes that it is very likely that the results would have been statistically significant if Yan had used a larger sample size.[124]

Moreover, while the station characteristics pointed out by Professor Yan may in fact be correlated with higher levels of local news production, it must be noted that the universe of cross-owned television stations is a very small one, artificially limited by the Commission's discriminatory regulatory scheme over the past three decades. Indeed, at the time the cross-ownership ban was adopted, and a number of existing combinations were grandfathered, the television marketplace consisted primarily of VHF stations that were affiliated with one of the "Big Three" networks. Given that the vast majority of cross-owned stations share many or all of the traits that Yan concludes are most likely to be associated with increased minutes of local news, the study hardly can be held up as conclusive evidence that cross-ownership itself has no effect on local news quantity.

More significant than any of these shared traits, NAA submits, is the actual performance of the grandfathered and other existing combinations in the marketplace. Indeed, commenters throughout the agency's recent proceedings on newspaper/broadcast cross-ownership repeatedly have provided examples of stations that have significantly increased their local news programming after becoming cross-owned. Media General, a company that owns several of the most recently created local combinations, has

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[123] *See Yan Study* at 17, Table 3.

[124] *See Hausman Statement* at ¶ 13-14. In addition, Professor Hausman takes issue with Yan's decision to exclude stations that do not air local news from his econometric model. As Professor Hausman explains, the fact that cross-owned stations are significantly more likely to have local newscasts than non-cross-owned stations leads to the inference that cross-owned stations also will air more minutes of local news. Eliminating non-news stations from the calculation improperly skews the results and masks the impact of cross-ownership. *See id*. at ¶¶ 11-12.

explained that five of its TV stations have added newscasts, some amounting to 90 minutes each day, *after* entering a cross-ownership relationship.[125] Gannett recounted that KPNX-TV, its cross-owned station in Phoenix, recently added a Spanish-language newscast.[126] Thus, the record solidly shows that if a station that either does not offer local news (and the Yan Study confirms that there are many) or that has a substandard news schedule becomes jointly owned with a local daily newspaper, it is likely to enter or become more active in the local news business. Indeed, this result is consistent with common sense: it stands to reason that a newspaper publisher that acquires a local broadcast station does so largely in order to capitalize on and expand its news capabilities. The same is not necessarily true for any other subset of potential station purchasers.[127]

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[125] *See* Media General Comments at 11-22.

[126] *See* Gannett Comments at 26 n. 97. The studies also suffer from several obvious methodological flaws. For instance, the Yan Study, even though it begins by criticizing the MOWG for "not control[ling] for . . . factors such as market size and station rank," *Yan Study* at 2, fails itself to control for station rank, and finds no relationship between market size and any of its localism measures. *See id.* at 18, 19 (showing no significant relationship between independent variable TVHH and any localism-related dependent variables). The *Cooper/Turner Study* fails to distinguish between top-four network stations and other stations, which generally have far less extensive local news offerings than major network affiliates. The five WB- or UPN-affiliated cross-owned stations included in the study apparently are compared on level ground with NBC, ABC, and CBS affiliates that receive substantial network support for their local news. *See Yan Study* at 15 (listing the network affiliations for the stations used in both the Cooper/Turner and Yan studies). This is hardly the "apples to apples" comparison that Mr. Cooper himself advocates. *See* Consumers Union Comments, Study 15 at 290.

Furthermore, both studies include data from cross-owned station WSFL-TV, Miami, Florida, which airs 30 minutes of news per day produced with the assistance of WTVJ, the NBC affiliate for the market. Tribune, which owns WSFL-TV and the *Sun Sentinel*, initially was prohibited by the terms of its temporary waiver of the cross-ownership rule from sharing news resources between the two outlets. As has been documented multiple times in previous proceedings, if it were not for the constraints of the cross-ownership rule and the temporary waiver condition, Tribune would "launch a new newscast using the resources of the *Sun Sentinel*." Reply Comments of Tribune Company, MM Docket No. 01-235, at 13 (Feb. 15, 2002); *see also* Reply Comments of Tribune Company, MB Docket No. 02-277 (Feb. 3, 2003); Comments of Tribune Company, MM Docket No. 01-235, at 26 (Dec. 3, 2001).

[127] Furthermore, the Yan Study concludes that there is a significant positive relationship between the amount of local news aired by a TV station and its revenues. *See Yan Study* at 18 (showing the relationship

Significantly, the Yan and the Cooper/Turner studies address only the *quantity* increases related to cross-ownership, and ignore the *quality* enhancements. But both considerations were equally crucial to the Commission's prior conclusions that the blanket cross-ownership ban undermines localism. In particular, the FCC relied on impressive quality-related statistics compiled by the MOWG, including findings that cross-owned stations received two to three times as many journalism awards as other network affiliates and substantially outperformed other stations with respect to news ratings.[128] Once again, these empirical findings were consistent with and substantiated by extensive real-world examples provided by existing cross-owners.[129]

In this regard, a chart in the Yan Study shows that 19 of the 22 cross-owned TV stations included in the sample that are affiliated with one of the top-four networks are ranked either number 1 or 2 in their markets.[130] These consistently high rankings exist notwithstanding the fluctuations in the popularity of the programming offered by ABC,

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between station revenues and amount of news programming to be significant at the .01 level). The link that Yan fails to draw is that station revenues themselves are positively correlated with newspaper/broadcast cross-ownership. As has been made abundantly clear in the record, cross-ownership generates efficiencies and cost-savings that bolster a combination's bottom line and thus allow resources to be redirected toward costly local news programming. *See* NAA Comments at 72-73 (citing three examples of combinations saving tens of thousands of dollars each year by combining resources). In fact, the *Cooper/Turner Study* confirms that newspaper-owned stations have significantly higher revenues than their counterparts. *See Cooper/Turner Study* at 322 (showing that the relationship between revenue and cross-ownership is significant at the 1% level using an OLS regression and at the 10% level with a Probit regression).

[128] *See 2003 Order* at 13839 (¶ 569) (explaining that newspaper-owned stations received 126 percent of the national average per station Radio and Television News Directors Association awards, and 337 percent of the national average A.I. DuPont Awards in 2000-2001); *Prometheus*, 373 F.3d at 398. Likewise, the average newscast ratings for newspaper-owned affiliates in the 5:30 and 6:00 time slots were 9.8 and 11 respectively, compared to 5.7 and 6.7 for all other affiliates. *See Spavins Study* at 3.

[129] *See 2003 Order*, 18 FCC Rcd at 13756-57 (¶¶ 347-50).

[130] *See Yan Study* at 15 (Table 1).

CBS, NBC, and FOX.[131] Accordingly, even if the conclusions of the Yan and Cooper/Turner studies are found to be credible as far as they go, they fall far short of providing any real basis to ignore existing record evidence that the newspaper/broadcast cross-ownership ban is detrimental to broadcast localism, and that its elimination would advance the Commission's public interest objectives.

C. <u>Evidence Purporting to Show That Locally Owned Media Are More Responsive to Community Needs Than Other Outlets Is Questionable and, in Any Case, Does Not Weaken the Case for Relaxing the Cross-Ownership Ban</u>

Several commenters cited an anonymous, draft working paper recently released by the Commission, *Do Local Owners Deliver More Localism? Some Evidence from Local Broadcast News* ("*Localism Working Paper*"),[132] to support their calls for strict ownership regulation.[133] Using data from 1998, the working paper purports to show that television broadcast stations with local owners air more minutes of local news than other stations.[134] The paper apparently was not completed, and it is not at all clear that its findings would be deemed reliable by the Commission.[135] In any event, because the data

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[131] Moreover, in the current broadcast environment, most network-affiliated stations tend to offer consumers very similar local news schedules due to the constraints of network programming obligations and in an effort to compete with their growing list of news competitors.

[132] Anonymous, *Do Local Owners Deliver More Localism? Some Evidence from Local Broadcast News,* June 2004, *at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267448A1.pdf (last visited Jan. 16, 2007) ("*Localism Working Paper*").

[133] *See* Consumer Union Comments at 10, Study 4; Marcus Comments at 10; UCC Comments at 58.

[134] *Localism Working Paper* at 15.

[135] As a preliminary matter, the *Localism Working Paper* suffers from several flaws that appear to make it unsuitable for serious consideration in this proceeding. First, stating that "[a]n explicit theory relating local broadcast news content and ownership characteristics is well beyond the space considerations of this paper," *id.* at 2, the paper acknowledges its own inability to empirically demonstrate a connection between local ownership and local news. Moreover, the authors use data from over eight years ago, with the most recent data points collected on August 7, 1998. The record is filled with evidence regarding the monumental changes in the market for local news over the past several years. *See* Section II.A, *supra*.

did not include any local newspaper/television combinations,[136] the authors were not in a position to draw any specific conclusions about the impact of cross-ownership with a local newspaper on a station's local news output. Nevertheless, pro-regulatory commenters broadly asserted that the results of the study should "inform and drive the decision to hold ownership limits in place to promote localism."[137]

If anything, the working paper's conclusions counsel in favor of lifting the blanket cross-ownership prohibition, not retaining it. Because the ban directly restricts locally owned and operated newspaper publishers and broadcasters from combining forces within a single community, eliminating it in fact would open the door to more effective and greater levels of "local ownership." Moreover, in speculating why local owners might favor local news, the paper's authors surmise that "a local owner likely has lower monitoring costs of local events and personnel and can cost-effectively cover more local news."[138] Whether or not this theory is accurate for most standalone broadcast stations, it certainly rings true for those co-owned with a local daily newspaper. Because cross-owned stations are able to rely on the extensive newsgathering resources of a

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Undoubtedly, some of those changes have affected stations' ability and incentives to cover local stories. In addition, the data covers only three stations in each of 20 markets, and only includes the highest-rated half hour of news on five randomly selected days, for a total of 2.5 hours of news per station. *Localism Working Paper* at 6. These constraints skew the working paper's results, particularly for markets with numerous stations offering local news, where stations air many hours of local news, and/or where stations happen to focus on national stories during peak viewing periods.

[136] The authors state that they tested whether television stations cross-owned with newspapers *in another market* covered more local news and found no significant relationship. S*ee Localism Working Paper* at 8-9, 21. Because of the limited data set, the authors were unable to test the effect of cross-ownership with a local newspaper.

[137] Consumers Union Comments at 10. Notably, the *Yan Study*, which also is cited heavily by pro-regulatory commenters, reaches the contrary conclusion that there is no statistically significant relationship between local ownership and either the decision to air local news or the amount of local news aired by TV stations. *See* Section II.B., *supra*; *Yan Study* at 18.

[138] *Localism Working Paper* at 14.

newspaper, they unquestionably have lower than average "monitoring costs of local events."

The authors of the *Localism Working Paper* further hypothesize that stations with non-local owners might concentrate on non-local coverage because of their ability to "spread . . . fixed costs" over multiple stations.[139] The content that will benefit from such efficiencies, they further assert, "will be non-local for most localities."[140] While these statements seem to ignore many of broadcasters' incentives to focus on local content in today's hyper-competitive news and information marketplace, it is unquestionably the case that owners of co-located newspaper/television combinations have added capacity to spread the fixed costs of producing news content. In the case of local newspaper/broadcast combinations, of course, that content typically will consist in substantial part of *local* news.

IV. THE OPENING COMMENTS SHOW THAT CROSS-OWNERSHIP DOES NOT HARM VIEWPOINT DIVERSITY

A. Commenters Provide Substantial Evidence of Their Incentives to and Practice of Diversifying Content Over Cross-Owned Outlets

As established by a wide range of parties in the opening comments, the emergence of new media platforms has created an increasingly diverse media marketplace, with more competing voices than ever before.[141] But even if viewpoint concentration were possible amidst such fragmentation, the opening comments confirm what the FCC's finding in 2003 that newspaper/broadcast cross-ownership does not

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[139] *Id.* at 2.

[140] *Id.*

[141] *See* Section II.A, *supra*.

diminish viewpoint diversity.[142] On the contrary, as existing newspaper/broadcast combinations demonstrate, media owners have strong incentives to diversify content over cross-owned properties and, thus, deliver a broader variety of material to consumers.

In the context of local television and radio ownership, various commenters illuminated the incentives broadcasters have to offer diversified content over co-owned outlets—incentives that also apply to newspaper/broadcast combinations.[143] Like co-owned stations, cross-owned newspapers and broadcast stations can generate higher profits for the overall enterprise by expanding the entity's reach and capturing different audiences within the same market.[144] Jointly owned outlets also have a unique capacity to spread content over multiple platforms, giving them an opportunity to diversify and increase niche offerings.[145] On the other hand, an owner controlling only one outlet in a

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[142] *See 2003 Order*, 18 FCC Rcd 13620 (¶¶ 355-69); *see also* Belo Comments at 13-17, Block Communications Comments at 6-8, Cox Comments at 25-31, Freedom of Expression Comments at 12-15, Gannett Comments at 25-31, Hearst-Argyle Comments at 46-51, Media General Comments at 34-38, Media Institute Comments at 5, NAB Comments at 111-112, Shamrock Comments at 3-4, Tribune Comments at 34-79. Notably, Tribune's most recent analysis of the five DMAs in which it owns and operates newspaper/broadcast combinations confirmed what it found in 2001—cross-ownership does not reduce diversity, and newspaper/broadcast combinations do not "dominate public discourse." Tribune Comments at 34-35.

[143] Commenters addressing the local television and radio ownership rules and the Dual Network Rule emphasized the diversity incentives inherent in common ownership. *See, e.g.*, Freedom of Expression Comments at 13; Gannett Comments at 43-44; Hearst-Argyle Comments at 31; Media General Comments at 32; Media Institute Comments at 6. The Media Institute suggested that "it is very much in the interest of multiple-station owners to strive for as much viewpoint diversity as possible," given the fixed number of listeners in a market and the economic benefits of attracting the greatest number of listeners. Media Institute Comments at 6. Especially for larger, publicly traded multiple-station owners, "[s]uccess is measured by achieving a profitable bottom line, not by achieving some sort of 'thought control' or political dominance of a radio market." *Id.*

[144] *See* Block Communications Comments at 8; Freedom of Expression Comments at 13; Gannett Comments at 43-44; Hearst-Argyle Comments at 31; Media General Comments at 32; Media Institute Comments at 6.

[145] *Cf.* Freedom of Expression Comments at 13 (discussing radio station consolidation); Media General Comments at 32 (referring to the Dual Network Rule).

market faces pressure to appeal to the widest and most popular segment of that market in order to remain profitable.[146]

Primarily because of the cost savings and operational synergies resulting from combined resources,[147] existing newspaper/broadcast combinations have been able to expand programming, take risks with innovative media offerings, and provide more diversified content over their cross-owned outlets.[148] While standalone outlets, especially in smaller markets, may be forced to reject unique programming initiatives because of cost concerns,[149] their more economically viable cross-owned counterparts can afford to take risks with diverse content.

The opening comments also reveal that commonly owned outlets in the same market do not necessarily share editorial functions or present a "coordinated voice."[150] In fact, numerous parties with existing newspaper/broadcast combinations documented the

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[146] *Cf.* Freedom of Expression Comments at 13; Media General Comments at 32.

[147] As noted above, various commenters emphasized the economic and efficiency benefits of cross-ownership. *See, e.g.*, Belo Comments at 14-15; Block Communications Comments at 8; Gannett Comments at 25; NAB Comments at 115; Shamrock Comments at 4.

[148] *See, e.g.*, Belo Comments at 13-15; Gannett Comments at 25-26; Media Institute Comments at 5. As one commenter pointed out, "benefits such as better journalism and more program diversity go hand-in-hand with a healthy bottom line." Media Institute Comments at 8. Moreover, as owner of WFAA-TV and *The Dallas Morning News*, Belo has had the opportunity to increase the "number of local news outlets accessible to Dallas residents"—through new product offerings such as a tabloid-style newspaper, Spanish-language daily, and regional cable news network—"without compromising the diversity of viewpoints available to the Dallas community." Belo Comments at 13-14. Similarly, over the past six years, Gannett has expanded its reach in the Phoenix market through the integrated operations of co-owned KPNX-TV, *The Arizona Republic*, and azcentral.com, adding to its offerings a Spanish-language broadcast and Latino weekly newspaper and news website. *See* Gannett Comments at 26.

[149] *See* Cascade Broadcasting Comments at 2.

[150] *See, e.g.*, Cox Comments at 19-20; Gannett Comments at 26, 30; Freedom of Expression Comments at 14; Media General Comments at 34-36, 38, App. 6; NAB Comments at 113-14; Shamrock Comments at 3; Tribune Comments at 34.

editorial and journalistic autonomy of their cross-owned outlets.[151] Media General, for example, explained that each of the individual outlets that form its converged platforms "has its own specific news and editorial staffs that make independent, final decisions about content." [152] On a similar note, Belo indicated that its cross-owned platforms in the Dallas market, *The Dallas Morning News* and WFAA-TV, share some newsgathering resources but are "rarely even aware of each other's viewpoints prior to public dissemination."[153]

Gannett's cross-owned outlets in the Phoenix market likewise have "maintained separate editorial voices;" the staffs at KPNX-TV and *The Arizona Republic* have the freedom to choose their own content.[154] To illustrate this fact, Gannett noted that *The Arizona Republic* recently sparked controversy with co-owned KPNX-TV, an NBC-affiliate, when it featured talent from competitor networks ABC and CBS on the front page of its September 5, 2006 edition.[155] Likewise, Cox offered several examples of controversy arising from its newspaper/broadcast combinations, including *The Atlanta Journal-Constitution*'s criticisms and unflattering reports about other Cox media outlets as well as a top Cox radio personality's criticism of an editor of *The Atlanta Journal-Constitution*.[156]

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[151] *See, e.g.*, Cox Comments at 19; Gannett Comments at 30; Media General Comments at 34-36.

[152] Media General Comments at 7-8; *see also id*. at 34-35.

[153] Belo Comments at 16.

[154] Gannett Comments at 26, 30.

[155] *Id.* at 30.

[156] Cox Comments at 19-20, Attachment.

To buttress their individual experiences, parties also cited studies finding that "commonly owned media outlets are capable of providing diverse viewpoints on issues of public concern, including political and campaign issues."[157] By way of example, Media General conducted an analysis of newspapers under common owners, finding that ownership did not predict viewpoint with respect to endorsement of candidates in the 2004 Presidential election.[158]

A 2006 study of media "slant" in daily newspapers conducted by the University of Chicago and the National Bureau of Economic Research further reinforces the real-world evidence provided in the opening comments.[159] Based on a comparison of partisan language in newspapers to that used by members of Congress, the study concludes that the political orientation of a newspaper is driven by the ideology of the targeted market rather than ownership. Specifically, while determining that slant is somewhat correlated across co-owned papers, the study finds that this is primarily a factor of "the geographic clustering of ownership groups."[160] In other words, newspapers may have economic incentives to tailor their political leanings to those of their geographic market.[161] After controlling for geographic location, however, the study finds "*no* evidence that the variation in slant has an owner-specific component."[162] What is more, the study provides

[157] NAB Comments at 113-14; *see also* Media General Comments at 35, 38, App. 6.

[158] *See* Media General Comments at 35, 38, App. 6.

[159] Matthew Gentzkow & Jesse M. Shapiro, *What Drives Media Slant?: Evidence from U.S. Daily Newspapers* (2006), *at* http://faculty.chicagogsb.edu/matthew.gentzkow/research/biasmeas111306.pdf (last visited Jan. 16, 2007).

[160] *Id*. at 43-44.

[161] *Id*. at 26.

[162] *Id*. at 44 (emphasis added).

"little evidence that media conglomerates homogenize news to minimize fixed costs in the production of content."[163] Importantly, as the study's authors note, their "findings suggest that ownership diversity may not be a critical precondition for ideological diversity in the media."[164]

Thus, as elucidated by academic research and the first-hand accounts of owners of existing newspaper/broadcast combinations, cross-owned outlets do not tend to disseminate ideologically uniform news and information; instead, common owners have incentives to, and indeed do, diversify content over these platforms.

B. The Empirical Evidence and Isolated Anecdotes Cited by a Handful of Consumer Groups Do Not Show That Newspaper/Broadcast Combinations Tend to Speak With a Coordinated Voice

Despite the evidence to the contrary, a small number of commenters insist that cross-owned outlets make a habit of speaking with coordinated voices.[165] These few pro-regulatory parties try to persuade the Commission that such outlets overwhelmingly function as a unified mouthpiece for their common owner's political, social, and financial interests.[166] The "evidence" cited in support of these assertions—much of which has been paraded before the agency in prior rounds of this proceeding[167]—does not bear them out. For example, the Consumers Union referred in their opening comments to several

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[163] *Id*. at 1.

[164] *Id*. at 44.

[165] *See* Consumers Union Comments at 15-16, 19-20, Study 5, Study 19; CWA Comments at 8-12; UCC Comments 65-66, App. E.

[166] *See* Consumers Union Comments at 15-16, 19-20, Study 5, Study 19; CWA Comments at 8-12; UCC Comments 65-66, App. E.

[167] *See, e.g.*, CWA Comments at 8-9 (noting that CWA comments in the *2002 Biennial Review* reported on a survey of existing co-owned newspapers and broadcast stations and repeating conclusions of same survery).

studies that focus on expansive topics such as the impact of the media on political processes and incentives for media owners to slant news. [168] None of the studies connects these broad issues to newspaper/broadcast cross-ownership, and the Consumers Union fails to provide any link between the studies and the specific diversity-related issues under consideration in this proceeding.[169]

While the Consumers Union also offers evidence suggesting that *individual* media outlets express viewpoints,[170] their comments are devoid of any concrete examples involving viewpoint coordination between jointly owned newspapers and broadcasters. As the Commission aptly observed in 2003, "it is hardly surprising, nor do we find it troubling, that newspaper owners use their media properties to express or advocate a viewpoint."[171] The agency further noted that its "broadcast ownership rules may not and should not discourage such activity."[172]

Those commenters that did provide anecdotal evidence related to cross-owned outlets failed to demonstrate any pattern of reduced viewpoint diversity.[173] For example, while CWA and UCC cited a few situations in which jointly owned outlets reportedly have shared newsgathering resources, most did not involve the coordination of editorial viewpoint. As NAA and other commenters showed in the opening comments, it is in fact

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[168] *See* Consumers Union Comments at 15-21, Study 5, Study 19.

[169] *See id.* For example, one study cited went so far as to claim that media owners are "political entrepreneurs" who are "drive[n] toward extremism" and a desire to control as many outlets as possible. *Id*. at Study 19 at 375.

[170] *See id*. at Study 5 at 81-91.

[171] *2003 Order* at 13758 (¶ 352).

[172] *Id*. at 13758-9 (¶ 352).

[173] *See, e.g.*, CWA Comments at 8-12; UCC Comments at 65-69, App. E.

typical for jointly owned outlets both to share resources and to maintain editorial autonomy. Indeed, CWA itself noted with respect to the Journal Communications newspaper/broadcast combination in the Milwaukee market that the "newspaper reporters treat [their sister] TV newsroom as a competitor."[174] UCC made the same observation about the combination owned by Scripps-Howard in the Cincinnati market.[175] In any event, to the extent that isolated attempts to stifle or distort news hypothetically might occur in connection with cross-ownership, a throng of competitors inevitably will be eager to point out any such alleged shortcomings.[176] Any belief that a single owner of a newspaper/broadcast combination could manipulate public opinion without challenge from rival TV and radio broadcasters, daily and weekly newspapers, the Internet, cable, or other competitors is held in ignorance of marketplace realities.

In sum, despite the isolated anecdotes and broad assertions put forth by a small number of consumer groups, the opening comments taken as a whole confirm that the Commission reached the correct conclusion in 2003. It was true then and remains the case today that the record does not "contain data or other information demonstrating that common ownership of broadcast stations and daily newspapers in the same community poses a widespread threat to diversity of viewpoint or programming."[177]

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[174] CWA Comments at 9.

[175] *Id*. at 11.

[176] *See supra* Section II.A. For example, as noted in an attachment to the UCC comments, Tribune-owned WFLA-TV recently was "excoriated by journalists across the country" for its alleged practice of charging guests on its morning show for program segments, even if it is true that the co-owned *Tampa Tribune* "took a kinder, gentler approach in its [coverage of] the story." *See* UCC Comments, at Appendix E.

[177] *2003 Order* at 13767 (¶ 368); *see also* Freedom of Expression Comments at 14 (There is "little, if any, evidence that [newspaper/broadcast] combinations either before or after the adoption of the [cross-ownership] rules, have presented a monolithic viewpoint on any or all issues of public importance.").

V. THE COMMENTS SUPPORT NAA'S RECOMMENDATION THAT THE COMMISSION ANALYZE THE DIVERSITY ISSUES REMANDED BY THE THIRD CIRCUIT BASED ON THE AVAILABILITY OF LOCAL NEWS AND INFORMATIONAL OUTLETS

NAA explained in its opening comments that it is neither necessary nor practical for the Commission to respond to the Third Circuit's concerns regarding the agency's prior diversity analysis either by attempting to fix the perceived flaws in the Diversity Index or formulating an alternative diversity "metric."[178] In particular, NAA pointed out that any effort to "weight" local news and informational outlets based on their perceived popularity would be at odds with the core purpose of the FCC's diversity objective.[179] The viewpoint diversity goal is focused on ensuring that consumers have access to a wide range of news and informational choices, a concept that has little if anything to do with market or audience share. NAA further explained that the inherently elusive concept of diversity, coupled with the highly complex nature of news and information dissemination and consumption in today's media marketplace, would make such a weighting exercise hopelessly frustrating and ultimately futile.[180] Instead, as NAA concluded, it would be far more logical and feasible for the Commission to focus its diversity analysis on the availability of and ready accessibility of consumers to a wide and ever-expanding variety of outlets contributing to the marketplace for local news and information.[181]

A number of parties to the proceeding presented cogent arguments consistent with NAA's analysis. For example, Fox Entertainment Group explained that "[i]t is an

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[178] *See* NAA Comments at 85-89.

[179] *Id.* at 89.

[180] *Id.* at 85.

[181] *See Id.* at 89-92.

outlet's ability to add to discourse that renders it a contributor to the market, not its relative popularity as measured by consumer use at any moment in time."[182] Accordingly, Fox further submitted, "there is really no reason for the Commission to become bogged down with the impossible—and inappropriate—task of attempting to assign varying weights to differing media."[183] Instead, "the FCC should apply the same rationale that it attempted to pursue with respect to the local TV ownership rule: since all media are equally capable of disseminating news, information and viewpoints, all media should be treated as equal participants in the marketplace of ideas."[184]

Similarly, NAB noted that, "for the Commission's diversity purposes, the paramount concern must be consumers' access to [various informational] outlets and the content they offer."[185] Thus, "[i]t is the availability of content from multiple outlets that matters—not the fact that some ideas, viewpoints or content may be more or less popular than other content at any particular time."[186] Indeed, as NAB further emphasized, "[o]utlets offering new or different or radical content—even if that content is not immediately popular or widely acclaimed—may ultimately be offering the content most valuable or innovative in the long term."[187]

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[182] Fox Comments at 27.

[183] *Id.* at 27; *see also* Belo Comments at 17.

[184] Fox Comments at 27.

[185] NAB Comments at 54.

[186] *Id.*

[187] *Id.* at 55.

The Coalition of Smaller Market Television Stations likewise observed that "diversity does not equate with popularity or share."[188] As the Coalition put it, "[t]he question is not how frequently or how many members of the public read the underground press, vote for minority political parties or visit special-interest web sites;" rather, the pertinent question is "whether these contributors to diversity are accessible to the public."[189] The group's comments also opined that "[w]ith a proper explanation, . . . a reviewing court [likely] will appreciate that diversity concerns itself with access to different viewpoints, not popularity."[190] Other commenters expressed analogous views in their respective comments.[191]

Yet, a small number of commenters continue to cling to the notion that the FCC's diversity analysis should be based on competition-like market share criteria.[192] In particular, the Consumers Union placed great emphasis on the results of a survey asking consumers "to identify the local news sources that they used most often and those they considered most important," and they suggested that the survey results should be used as the basis for reconstructing the Diversity Index.[193] Given that the results of the survey indicate that broadcast television and daily newspapers continue to be more popular sources of local news than alternative media, including the Internet, the Consumers

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188 Smaller Market Television Stations Comments at 23.

189 *Id.* at 23.

190 *Id.* at 24.

191 *See* Belo Comments at 17; Gannett Comments at 32-33; Gray Television Comments at 19.

192 *See* Consumers Union Comments at 10-14; *see also* AFL-CIO Comments at 57-58; CWA Comments at 4-5, 30-35; AFTRA Comments at 11; Stapleton Comments at 6, 10-11.

193 Consumers Union Comments at 11, Studies 20-39.

Union further argues that the Internet should be given very little weight in the revised version of the Diversity Index.[194]

Because of the complex nature of the current information marketplace and the myriad and ever-shifting ways in which consumers access news and information, NAA submits that any survey attempting to capture with specificity the relative importance of one outlet type vis-à-vis another inherently will be subject to flaws. More importantly, employing a consumer usage survey as the basis for the FCC's diversity analysis in this proceeding would miss the mark entirely. In order to properly assess any impact that relaxing the newspaper/broadcast cross-ownership rule would have on the diversity of viewpoints available in local communities, the Commission must remain focused on the enormous array of choices—including those available over the Internet—consumers have available to them for local news and information in the current marketplace, not on what voices may be more popular, or who may speak the loudest. For the same reasons, the attempt by the Consumers Union to recreate the Diversity Index is ill conceived. Consumers Union's attempt to adjust the Commission's prior model around the margins only can be understood as a misguided effort to justify its head-in-the-sand view of the contemporary information marketplace and preserve regulations that were crafted for a world that no longer exists. No amount of tweaking can eliminate the fundamental defects embodied in this overall approach.

[194] *See id.* at Study 21 at 413.

VI. THE OPENING COMMENTS DEMONSTRATE THE LEGAL IMPERATIVES FOR THE FCC TO FINALLY ELIMINATE THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP BAN

A. Notwithstanding the Handful of Assertions to the Contrary, the Commission Is Under a Statutory Mandate to Modify the Newspaper/Broadcast Rule

The overwhelming majority of commenters agreed with NAA that the FCC has only a limited set of issues to address in this proceeding, because the Third Circuit's remand of the Cross-Media Limits was itself very narrow in scope.[195] Most importantly, as NAA and other commenters explained, the Third Circuit specifically found that the FCC had set forth "reasoned analysis" to support its "determination that the blanket ban on newspaper/broadcast cross-ownership was no longer in the public interest."[196]

This bottom line conclusion compels repeal or modification of the restriction. As NAA and many other commenters emphasized, the Third Circuit's holding on this score could not have been clearer.[197] The Court explained that: "A regulation deemed useful when promulgated must remain so. If not, it must be vacated or modified."[198] Quite simply, in light of the FCC's prior determination that the blanket ban is not necessary in the public interest, the question whether the Commission can retain a blanket ban on newspaper/broadcast cross-ownership is, as Media General aptly put it, "off the table."[199]

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[195] NAA Comments at 15-16; *see* Belo Comments at 8-9; Gannett Comments at 11; Media General Comments at 5-7; Morris Comments at 8-9; Tribune Comments at 11-12.

[196] NAA Comments at 11 (quoting *Prometheus*, 373 F.3d at 398; *Further Notice*, 21 FCC Rcd at 8846 (¶ 28)); *see* Bonneville Comments at 4; Cox Comments at 7; Tribune Comments at 11 n.25.

[197] NAA Comments at 18 (quoting *Prometheus*, 373 F.3d at 395); *see* Belo Comments at 9; Media General Comments at 66-68; NAB Comments at 5.

[198] *Prometheus*, 373 F.3d at 395; *see* NAA Comments at 18 (quoting *Prometheus*, 373 F.3d at 395); *see also* Belo Comments at 9; Media General Comments at 66-68; NAB Comments at 5.

[199] Media General Comments at 5.

Unless the Commission can provide a reasoned analysis demonstrating that it must reverse course here because its prior finding that the prohibition does not serve the its public interest goals is no longer accurate, the agency has no choice but to eliminate the absolute ban on newspaper/broadcast cross-ownership in this proceeding.[200]

A small minority of commenters seek to divert attention from the Court's clear directive that a rule cannot be retained once the FCC concludes that it does not serve the public interest. These parties overemphasize the Third Circuit's limited criticism of the Commission's statement in the *2003 Order* that Section 202(h) embodies a "presumption in favor of repealing or modifying the ownership rules."[201] Even if the Third Circuit's narrow reading of the statutory mandate were accurate,[202] however, these commenters are wrong to suggest that the Commission may retain the newspaper/broadcast cross-ownership prohibition in the face of its prior conclusion that it does not serve the public interest. If Section 202(h) means anything at all, it means that once the FCC determines—as it has here—that a rule is no longer necessary in the public interest, it is under a nondiscretionary statutory obligation to eliminate, or at least relax, the

[200] NAA Comments at 18; *see* Belo Comments at 9-10; Cox Comments at 6; Media General Comments at 7; Tribune Comments at 13-14.

[201] NAA Comments at 17 (quoting *2003 Order*, 18 FCC Rcd at 13264 (¶ 11)); *see* Center for Creative Voices Comments at 1-3, *see also* Comments of Screen Actors Guild Comments, *et al*. at 27.

[202] As explained in its opening comments, NAA submits that the Third Circuit's decision actually understates the FCC's obligations under Section 202(h). *See* NAA Comments at 17-18 n.62 (explaining that, properly interpreted, Section 202(h) imposes a much more stringent standard of review on the Commission than the Third Circuit found); *see also, e.g.*, Clear Channel Comments at 5-6. Indeed, Chairman Martin himself has acknowledged that the standard approved by the Third Circuit embodies a "looser definition of the statutory term 'necessary in the public interest' than the language of the statute suggests," and "gives the Commission substantially more discretion in deciding whether to retain rules" than Congress intended. Speech of FCC Chairman Kevin J. Martin to the 2006 ABA Administrative Law Conference (Oct. 26, 2006), *at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-268089A1.pdf (last visited Jan. 16, 2007).

restriction.[203] This result is compelled by the terms of the statute and by the Third Circuit's decision,[204] as well as the reasoning of the D.C. Circuit in its periodic review decisions.[205]

B. <u>The Cross-Ownership Restriction Cannot Withstand Constitutional Scrutiny</u>

NAA explained in its opening comments that the fact that the newspaper/broadcast cross-ownership rule affects the First Amendment rights of newspaper publishers and broadcasters requires the FCC to closely scrutinize whether its restrictions remain appropriately tailored means to address a genuine problem.[206] NAA further explained that, regardless of the appropriate constitutional standard of review, the absolute prohibition on newspaper/broadcast cross-ownership cannot survive scrutiny, and noted that the FCC *itself* recognized in the *2003 Order* that an across-the-board ban

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[203] NAA Comments at 17-18; Belo Comments at 9-10; Cox Comments at 6; Media General Comments at 7; Tribune Comments at 13-14. Further, as NAA and others explained, even apart from Section 202(h), the Administrative Procedure Act requires all federal agencies to evaluate their rules over time, to ensure that rules actually produce the benefits that the agency predicted they would, and that the problem that the rules seek to address remains in need of a regulatory solution. NAA Comments at 20-21; NAB Comments at 3-4; Clear Channel Comments at 4-5. In light of the Commission's prior conclusions, affirmed by the Third Circuit and only amplified by the current record evidence, that the newspaper/broadcast cross-ownership ban is not necessary and is in fact affirmatively harmful, elimination of the prohibition would be legally required even if Section 202(h) had never been enacted into law.

[204] *Prometheus*, 373 F.3d at 395 ("In a periodic review under § 202(h), the Commission is required to determine whether its then-extant rules remain useful in the public interest; if no longer useful, they must be repealed or modified.").

[205] *Cellco P'ship v. FCC*, 357 F.3d 88, 94 (D.C. Cir. 2004) (the 1996 Act mandates that the Commission identify rules that are no longer necessary "followed by their repeal or modification"); *see Fox Television Stations v. FCC*, 280 F.3d 1027, 1033, *reh'g granted in part*, 293 F.3d 537 (D.C. Cir. 2002) (Congress intended the biennial review to "continue the process of deregulation" that the 1996 Act commenced); *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002) (remanding the local television ownership rule to the Commission for further consideration in light of agency's failure to justify rule).

[206] NAA Comments at 21-22.

on common ownership could not be constitutionally sustained.[207] Numerous other commenters echoed these views.[208]

NAA and a number of other commenters also demonstrated that in today's age of competitive abundance, the newspaper/broadcast cross-ownership rule would be subject to at least some degree of heightened First Amendment scrutiny, which it would surely fail.[209] The record in this proceeding paints a clear picture of a media marketplace that bears no resemblance whatsoever to the marketplace that existed in 1970s when the prohibition was adopted and upheld against constitutional challenge.[210] In the face of the tremendous degree of choice that is available today, continuing to insist that there is any sort of "scarcity"[211] of available means for an individual or organization to communicate is nothing short of absurd.

In addition to the increased number of broadcast stations and the advent of cable and satellite television and satellite radio, the Internet, as many parties showed, has had a tremendous and transformative impact on the information marketplace.[212] Accordingly, the Internet simply cannot be ignored in any analysis of whether continued interference with the First Amendment rights of newspaper publishers and broadcasters can be

[207] *Id.*; *see 2003 Order*, 18 FCC Rcd at 13626-27 (¶ 16).

[208] *See, e.g.*, Freedom of Expression Foundation Comments at 23-28; Media General Comments at 69-87; Tribune Comments at 83-92.

[209] NAA Comments at 22; *see id.* at 22 n.80; *see also* Freedom of Expression Foundation Comments at 23-28; Media General Comments at 69-87; Tribune Comments at 83-92.

[210] *E.g.*, NAA Comments at 23-64; *see supra* Sections II.A, II.C.

[211] *See Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 388 (1969).

[212] NAA Comments at 46-65; *see supra* Sections II.A, II.C.

sustained.[213] The Internet's rapid emergence as a global communications powerhouse, with rapidly improving capacity to stream audio and video content, has rendered completely unsupportable the historic arguments in favor of limiting the constitutional protections to which broadcasters and newspaper publishers (in the case of their ability to own radio and television stations) are entitled.[214]

As the record in this proceeding plainly shows, the Internet and related technologies allow anyone, anywhere, to transmit messages of their own choosing to interested audiences across the nation and around the world.[215] Aside from the rise of Internet "blogs"—which provide an obvious analog to newspapers—individuals and organizations have the powerful new tools of "podcasting" and Internet video-sharing sites such as YouTube at their disposal.[216] Indeed, these technologies "give every man, woman, and child the ability to be a one-person publishing house or broadcaster[] and to communicate with the entire planet, or even break news of their own."[217] Due to the widespread availability, and increasing popularity of, these new technologies, the Constitution does not permit the Commission to maintain a myopic focus on the "media" as being limited to "paper, ink and airwaves."[218]

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[213] NAA Comments at 64 n.246; *see* Media General Comments at 70, 77-83; Tribune Comments at 88.

[214] NAA Comments at 64 n.246; Media General Comments at 70, 77-83; Tribune Comments at 88.

[215] NAA Comments at 49-53; *see supra* Sections II.A, II.C.

[216] NAA Comments at 29-30, 33-34; *see supra* Sections II.A, II.C.

[217] Progress and Freedom Foundation Comments at 18.

[218] Daniel Corbett, *A Digital Manifesto: New Media Transforms the Ownership Debate* (June 20, 2005), *at* http://www.cei.org/gencon/016,04620.cfm (last visited Jan. 16, 2007).

Several pro-regulatory commenters go so far as to suggest that the First Amendment *requires* continued interference with the speech rights of broadcasters and newspaper publishers.[219] As an initial matter, these commenters seek to elevate the First Amendment rights of listeners and viewers to supreme heights, and disregard entirely the fact that broadcasters and newspaper publishers are entitled to First Amendment protections.[220] The Supreme Court repeatedly has made clear, however, that broadcasters and newspaper publishers are, in fact, entitled to such protections.[221]

Second, acceptance of these commenters' arguments would turn the First Amendment on its head. The First Amendment "does not create 'positive' rights-requirements that the government act." [222] Quite the contrary, it protects "negative" rights—*i.e.*, "rights to be free from government action."[223] Those who advocate the view that the First Amendment requires regulation of the media do not seek merely to protect their own rights to freely speak their opinions, but, in actuality, seek to advance their own views by silencing others. Although the Supreme Court has recognized the value of

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[219] Center for Creative Voices Comments at 6-7; Consumers Union Comments at 8-9, Study 1, Study 3.

[220] Center for Creative Voices Comments at 6-7; Consumers Union Comments at 8-9, Study 1, Study 3**.**

[221] *See, e.g.*, *Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 674 (1998) ("When a public broadcaster exercises editorial discretion in the selection and presentation of its programming, it engages in speech activity."); *FCC v. League of Women Voters*, 468 U.S. 364, 378 (1984) ("[W]e have . . . made clear that broadcasters are engaged in a vital and independent form of communicative activity."); *Columbia Broad. Sys., Inc. v. DNC,* 412 U.S. 94, 110 (1973) (explaining that, under the First Amendment, television broadcasters enjoy the "widest journalistic freedom" consistent with their public interest responsibilities); *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948) (recognizing that broadcasting is a medium with First Amendment interests).

[222] *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 319 (6th Cir. 1998); *see also* Lillian R. Bevier, *Specious Arguments, Intractable Dilemmas*, 94 Colum. L Rev. 1258, 1277 (1994) (explaining that the First Amendment "is a source of negative rights against the government, not a repository of positive entitlement to government favors.").

[223] *Toledo Area AFL-CIO Council*, 154 F.3d at 319.

"promoting 'the presentation of vigorous debate of controversial issues of importance and concern to the public,'" it has never held that the First Amendment *mandates* the government to take affirmative action, much less to discriminate against particular categories of speakers, to further this goal.[224] Instead, the Court has previously rejected claims of media consumers that the Constitution somehow requires the FCC to take action in furtherance of certain social norms, whatever their ultimate or substantive validity.[225] Rather, longstanding and consistent precedent counsels reliance on an unfettered marketplace of ideas to inform the American citizenry.

In sum, regardless of the precise level of constitutional scrutiny to which the newspaper/broadcast cross-ownership ban would appropriately be subject, an absolute prohibition cannot be sustained on the current record. The FCC and the Third Circuit have already determined that the blanket ban is not necessary in the public interest, and that it is in fact counter-productive. In the face of these determinations, it would be impossible for the government to establish a "compelling," "substantial," or even an "important" interest in retaining the rule intact. Furthermore, there is not now—and, indeed, never has been—any concrete evidence that ownership of broadcast stations by newspaper publishers causes demonstrable harm; to the contrary, the record is replete

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[224] *WNCN Listeners Guild v. FCC*, 450 U.S. 582, 604 (1981) (quoting *Red Lion*, 395 U.S. at 385); *see Georges v. Carney*, 691 F.2d 297, 300 (7th Cir. 1982) (While the First Amendment "forbids government to interfere with the competition of ideas," it "does not require it to create a well informed citizenry."); *see also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 257 (1974) ("Government-enforced right of access inescapably 'dampens the vigor and limits the variety of public debate.'").

[225] *WNCN Listeners Guild*, 450 U.S. at 604 ("[W]e did not imply that the First Amendment grants individual listeners the right to have the Commission review the abandonment of their favorite entertainment programs."); *see Columbia Broad. Sys., Inc.*, 412 U.S. at 121-32 (rejecting claims that the First Amendment required the FCC to adopt an equivalent to the fairness doctrine for paid editorial advertisements); *see also id.* at 113 (approvingly citing Commission rulings finding that "no private individual or group has a right to command the use of broadcast facilities").

with evidence that cross-ownership results in quantifiable public interest benefits. Accordingly, the FCC could not possibly demonstrate that the rule is the "least restrictive means," or that it is "narrowly tailored," or even that it is currently a "reasonable means"[226] for achieving a permissible public interest goal. Simply put, the newspaper/broadcast cross-ownership rule could not today withstand even the most relaxed form of Constitutional analysis, and the First Amendment certainly does not foreclose the Commission from seeking to promote diversity by relying on market forces rather than intrusive and discriminatory government regulation.[227]

[226] *E.g., FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 802 (1978).

[227] *WNCN Listeners Guild*, 450 U.S. at 604.

VII. CONCLUSION

For all of the above reasons, NAA respectfully submits that the FCC must move forward expeditiously to eliminate the newspaper/broadcast cross-ownership ban. Based on its prior public interest findings, as affirmed by the Third Circuit, the agency is now legally obligated to repeal the flat ban. As the record in this proceeding shows, the public interest considerations that informed the Commission's previous decision to relax the rule have only become more compelling in the intervening three years.

Respectfully submitted,

/s/
John F. Sturm
President and Chief Executive Officer
NEWSPAPER ASSOCIATION OF AMERICA
1921 Gallows Road
Suite 600
Vienna, VA 22182
703.902.1601

/s/
Paul J. Boyle
Senior Vice President, Public Policy
Laura Rychak
Legislative Counsel
NEWSPAPER ASSOCIATION OF AMERICA
529 14th Street NW
Washington, DC 20045-1402
202.638.4770

/s/
Richard E. Wiley
James R. Bayes
Martha E. Heller
Eve K. Reed
of
WILEY REIN & FIELDING LLP
1776 K Street NW
Washington, DC 20006
202.719.7000

Its Attorneys

ATTACHMENT 1

STATEMENT OF PROFESSOR JERRY HAUSMAN, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CONCERNING STUDIES SUBMITTED IN FCC MB DOCKET 06-121
(January 16, 2007)

BACKGROUND AND QUALIFICATIONS

1. I am the MacDonald Professor of Economics at the Massachusetts Institute of Technology ("MIT") in Cambridge, Massachusetts.
   I graduated from Brown University in 1968. I received a D.Phil. (Ph.D.) in economics in 1973 from Oxford University where I was a Marshall Scholar. I have been at MIT since completing my D.Phil in 1973.

2. My academic specialties are econometrics, which I have taught and done research in over 30 years, and applied microeconomics. Econometrics is the application of statistical methods to economic data. Applied microeconomics is the study of behavior by firms and by consumers.

3. I teach a graduate course at MIT in applied industrial organization, which is the study of how markets operate. I also teach two courses at MIT in econometrics at the graduate level.

4. I have been an associate editor of *Econometrica*, the leading econometrics journal, and the *Rand (Bell) Journal of Economics*, the leading journal of applied microeconomics. I have published over 150 academic research papers in leading economic journals, including the *American Economic Review*, *Econometrica* and the *Rand (Bell) Journal of Economics*.

5. I have been recognized as an expert in econometrics and applied microeconomics, and I have won numerous awards and distinctions in this respect. For example, in 1980, I was awarded the Frisch Medal of the

Econometric Society for the best paper published in *Econometrica* in the previous five years. In December 1985, I received the John Bates Clark Award of the American Economic Association, awarded every other year for the most "significant contributions to economics" by an economist under the age of 40. I have won many awards for research in econometrics, including awards in the US, international awards, and awards from groups in countries such as Australia and China. In 2005, I won the Biennial Gold Medal of the Modelling and Simulation Society of Australia and New Zealand. I was appointed in 2005 an Honorary Professor at Xiamen University, China. I have also been elected as a Fellow of numerous academic organizations (for example, University College of London).

CONCLUSIONS

6. I have been asked by counsel to the Newspaper Association of America to review "Newspaper/Television Cross-Ownership and Local News and Public Affairs Programming on Television Stations: An Empirical Analysis," by Professor Michael Yan, which was submitted to the FCC by the Donald McGannon Communication Research Center in the above-referenced proceeding on October 23, 2006. In addition, I have been asked to review "Consolidation and Conglomeration Diminish Viewpoint Diversity and Do Not Promote the Public Interest: New Evidence (Study 16)," submitted by Mark Cooper and S. Derek Turner of the Consumers Union in the same proceeding. In particular, I have been asked to review the analysis of local news programming offered by broadcast stations cross-owned with a daily newspaper included in that submission on pages 310-322. I have come to the following conclusions regarding these submissions:

- I find the absence of data or a sufficient description of his econometric techniques a significant detriment in the Yan study. Required academic practice is to give a much more complete description to permit a detailed analysis of the strengths and shortcomings of an empirical study.
- It is difficult to infer very much from Prof. Yan's study because he does not provide the data and his econometric methods are deficient, where the main outcome models he estimates are not identified, which means that no statistical inferences can be made from the estimated coefficients.
- However, to the extent that the data that Prof. Yan presents can be used to make inferences, both the differences in means and the regression model imply that, even after controlling for other independent variables, cross-ownership leads to a greater number of minutes of both local news and local public affairs programming. I disagree with Professor Yan's conclusion that the econometric results in Table 4 showing that cross-owned stations provided an average of 242 more minutes of local news than non-cross-owned stations during the study period is not important from

an economics and econometrics viewpoint. The lack of statistical significance most likely arises because of the limited sample size, not because there is no positive relationship between cross-ownership and the quantity of local news aired. In fact, based on the significant difference in local news minutes between cross-owned and non-cross-owned stations reported in Yan's findings, it appears very likely that the results would have been statistically significant if Yan had used a larger sample size.

- Cooper and Turner's (CT) results also provide evidence that cross-ownership leads to more minutes of both local news and local public affairs. Contrary to CT's suggestion, the results in the two right-most columns of Exhibits 4 and 5 of their study are statistically significant based on a one-sided test.
- I disagree with CT's claim that "The evidence clearly supports the conclusion that there is no direct relationship between cross ownership and the amount of local news or public affairs programming." (p. 321). Their own results, when correctly interpreted, almost always find that cross-ownership leads to more minutes of local news and local public affairs. Again, that the estimated coefficients are sometimes not statistically significant arises because of the limited sample size, not because of findings of very small estimated coefficients or estimated coefficients that change sign depending on the specifications.

ANALYSIS OF THE YAN STUDY

7. I do not separately analyze the independent variables used in the Yan study. However, I do find it to be a potentially significant omission that only an indicator (dummy) variable is used for “cross owned”, i.e. cross ownership. I might expect that the size of the economies of scope between newspaper and TV new production would depend on the size of the newspaper operations.[228] However, without access to the study data, I cannot test to see whether use of this independent variable would be significant.

8. The data in Table 3 to the Yan study give a significant indication that cross-owned stations do televise substantially more local news and local public affairs programming. The estimated means are:

	C-O	Non-CO	Diff	t-stat
Local News	45.79	24.35	21.46	4.52
Local PA	95.56	45.16	50.40	2.00

Thus, large differences in the means are present with cross-owned stations broadcasting 88.1% more local news and 111.6% more local public affairs than non-cross owned stations. Given that Prof. Yan uses a random sample of TV stations, this finding would lead one to start off with the expectation that the results of this comparison (like an earlier FCC study finding a positive correlation between cross-ownership and local news

[228] Prof. Yan refers to “economies of scale” where the correct economic terminology is “economies of scope.”

production) are sound and quite unlikely to be reversed with further econometric analysis.

9. In terms of a statistical significance test, I use a standard t-test using the means that Prof. Yan. presents in Table 3 and the standard deviations given in Table 2. I make the usual assumption under H_0 that the means and standard deviations for cross-owned and non-crossed owned stations are the same. I also assume that the stations are an independent sample, which should follow from the random sampling procedure that Prof. Yan describes that he used. I calculate t-statistics, which I give in the above table. For local news the t-statistic is 4.52, which is well-above any reasonable significance level used in empirical studies. Accordingly, I reject H_0 that the distributions of local news broadcasts are the same for cross-owned and non-cross owned stations. Thus, I would reject the hypothesis based on these data that cross-owned and non-cross owned stations broadcast the same amount of local news. Instead, I conclude that cross-owned stations broadcast more local news.

10. For public affairs I calculate the t-statistic to be 2.00, so again I would reject the hypothesis based on these data that cross-owned and non-cross-owned stations broadcast the same amount of public affairs programming. Instead, I conclude that cross-owned stations broadcast more local public affairs. Given the random data selection techniques, these results are very suggestive that the previous FCC study came to the correct conclusion that

cross-owned stations broadcast more local news and more local public affairs than non-cross owned stations.

11. I disagree with Professor Yan's decision to effectively exclude television stations that do not provide local newscasts from his econometric model. Prof. Yan's econometric analysis faces a major problem in that 22% of the sample had no local news programming and 57% had no local public affairs programming.[229] He recognizes the problem but he uses incorrect econometric techniques to attempt to solve it. He uses a "sample selection" model to attempt to solve the problem, but the model he estimates is not identified for the "outcome model" of the number of minutes broadcast. An unidentified model means that one cannot make any inferences on the estimated coefficients.[230]

12. It has been known in econometrics for the past 15 years that without an exclusion restriction on the outcome model, one cannot separate out the effects of the variables in the selection model from the effects of the

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[229] Prof. Yan should have reported how these percentages vary between cross-owned and non-cross owned stations. From a discussion in the CT submission I infer that almost all stations that broadcast no local news or no local public affairs are non-cross owned stations. This finding is indicative that on average cross-owned stations broadcast more local news and more local public affairs and is consistent with Prof. Yan's econometric results in Table 4.

[230] In principle, one can estimate bounds on the coefficients. However, without access to the data no bounds can be computed.

variables in the outcome model.[231] Since Prof. Yan's econometric specification has no exclusion restriction, the model cannot be used to make correct inferences.

13. However, the selection model (first equation probit model) can be used to make valid inferences. Here in Table 4 Prof. Yan finds that cross ownership increases the probability by a substantial (and highly statistically significant) amount that a given station will broadcast local news, after controlling for all other independent variables. So unless cross-owned station local TV news broadcasts are significantly shorter in duration, an implausible outcome, one would conclude that cross-ownership does in fact lead to more local news.

14. Even in his deficient outcome model, Prof. Yan finds that cross ownership leads to 242.2 more minutes than non-cross owned stations, but he disregards the results because they are not statistically significant. Nevertheless, 242.2 more minutes is 2.76 times higher than the unconditional standard deviation given in Table 2, which leads me to the conclusion that even within the context of a deficient econometric model, Prof. Yan has provided evidence that cross-ownership leads to more

[231] This result is demonstrated by C. Manski, "Nonparametric Bounds on Treatment Effects", American Economic Review, 80, 1990. Many other authors have also considered this problem.

minutes of local news.[232] The lack of statistical significance most likely arises because of the limited sample size, not because there is no positive relationship between cross-ownership and the quantity of local news aired.

15. Prof. Yan's results, when correctly interpreted, demonstrate that after controlling for other factors cross-owned station broadcast more local news. Suppose I disregard Prof. Yan's empirical finding that conditional on broadcasting local news, cross-owned station broadcast 242.2 more minutes. Instead, for purposes of this calculation I will assume that, conditional on broadcasting local news, both cross-owned and non-cross owned station broadcast the same number of minutes, which is the inference that Prof. Yan would like to make from his deficient outcome model results. I will denote these equal numbers of minutes as m.

16. From elementary statistics, the total number of minutes of local news that a given station will broadcast is the product of the probability that they broadcast local news multiplied by the number of minutes of local news they broadcast, if they broadcast any local news. Prof. Yan's econometric results find that cross-owned stations have a significantly higher probability of broadcasting local news so I calculate:

$$TMIN_{CO} = P_{CO} \text{ x } m >> P_{NCO} \text{ x } m = TMIN_{NCO}$$

[232] A number of the estimated coefficients in the outcome model are very large relative to their standard errors, which leads me to the conclusion that the non-identification of the model is creating econometric problems.

where $TMIN_{CO}$ is the total minutes of local news broadcast by a cross owned station, $TMIN_{NCO}$ is the total minutes of local news broadcast by a non-cross owned station, P_{CO} is the probability that a cross owned station broadcasts local news, P_{NCO} is the probability that a non cross owned station broadcasts local news, and m is the common minutes of broadcast (by assumption). The overall result is that cross-owned stations broadcast a significantly greater amount of local news than do non-cross owned stations, even if I completely adopt the results of Prof. Yan's econometric study.

17. When I consider the local public affairs programming in Table 5, I find that the selection model does not find any significant effect of cross ownership.[233] In the econometrically deficient outcome model, however, cross ownership is estimated to lead to 83.6 more minutes of local affairs programming, which is 10.8 times higher than the unconditional standard deviation given in Table 2. This finding leads me to the conclusion that even within the context of a deficient econometric model, Prof. Yan has provided evidence that, after controlling for other independent variables, cross-ownership leads to more minutes of local public affairs, although the evidence is not as strong as for local news.

18. Overall, it is difficult to infer very much from Prof. Yan's study because he does not provide the data and his econometric methods are deficient,

[233] The estimated coefficient is both small in magnitude and not statistically significant.

where the main outcome models he estimates are not identified. However, to the extent that the data that Prof. Yan presents can be used to make inferences, both the differences in means and the regression model imply that cross-ownership leads to greater numbers of minutes of both local news and local public affairs programming, even after controlling for other independent variables. Further, economic theory leads to this conclusion given the presence of economies of scope between news gathering of newspapers and TV stations and the high amount of competition among TV stations in most cross-ownership markets.

ANALYSIS OF THE COOPER AND TURNER SUBMISSION

19. I do not consider the selective quotations in the Cooper and Turner (CT) submission; instead, I analyze their econometric results. In their "Matched Comparison" analysis given in Exhibit 1, and the econometric regression of Exhibit 2, CT find that for both local news and for local public affairs that cross-ownership leads to more minutes of TV broadcasts. I note that for local public affairs the finding is statistically significant.[234] Thus, the matched comparison data set finds evidence that both local news and local

[234] CT make a mistake in reporting their results because they do not take account that the test should be a one-sided hypothesis that cross-ownership leads to greater news and public affairs. I am unaware that anyone has claimed it would lead to fewer minutes, and Yan's study, reviewed above, gave no evidence of this outcome.

public affairs increase with cross-ownership, after taking into account other independent variables.

20. CT make a claim that is inconsistent with the Yan data set they use. They claim with “over 80 percent of households receiv[e] their video signals over cable “ (p. 313), but the Yan data finds only 68.6% of households subscribe to cable television. (Yan, Table 2). Thus, it is not clear that omitted variable bias may not create problems in the CT study.

21. In their Exhibit 3, CT find that cross-ownership leads to more minutes of local news in each of their specifications. Further, the estimated effects are likely to be downward biased because of the censoring problem in the data discussed above and by Prof. Yan. In Table 4, the estimated results demonstrate again that cross-ownership leads to a greater “presence” of local news in every specification.[235]

22. Similar results are found in Exhibits 5 and 6 for local public affairs. Every specification in Table 5 finds that cross-ownership leads to more minutes of local public affairs. A number of the estimate coefficients are significant at the 5% level.[236] In Exhibit 6, CT estimate that 3 out of 4 specifications find a positive effect of cross-ownership. In the single

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[235] The use of a Tobit model here does not make econometric sense since the left hand side variable takes on only 2 values, which is inconsistent with the specification of a Tobit model which requires the presence of a continuous left hand side variable.

[236] Again CT fail to note that the test here should be of a one-sided hypothesis.

specification that finds a negative effect, no right hand side variable in the entire specification is statistically significant, which leads to great doubts about the validity of the specification.[237]

23. I conclude that CT's results provide evidence that cross-ownership leads to more minutes of both local news and local public affairs. Indeed, the Tobit model results in the two right-most columns of Exhibits 4 and 5 are statistically significant based on a one-sided test. I thus disagree with CT's claim that "The evidence clearly supports the conclusion that there is no direct relationship between cross ownership and the amount of local new or public affairs programming." (p. 321). Their own results, correctly interpreted, almost always find that cross-ownership leads to more minutes of local news and local public affairs. That the estimated coefficients are sometimes not statistically significant arises because of the limited sample size, not because of findings of very small estimated coefficients or estimated coefficients that change sign depending on the specifications.

[237] I find it quite odd that while CT use a Tobit model in Exhibit 5, they did not employ a Tobit specification in Exhibit 4. They give no explanation for this omission.